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Vol. II

TRANSCRIPT OF RECORD

(Pages 761 to 1576)

Supreme Court of the United States

OCTOBER TERM, 1945

No. 444

FLORENCE B. BIGELOW, MARION B. KOERBER, JOHN E. BLOOM AND WILLIAM C. BLOOM, PETITIONERS,

vs.

RKO RADIO PICTURES, INC., LOEW'S, INCORPORATED, TWENTIETH CENTURY-FOX FILM CORPORATION, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED SEPTEMBER 21, 1945.

CERTIORARI GRANTED NOVEMBER 5, 1945.

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Petitioners,

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Respondents.

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THE BUNTHORP-WARREN PRINTING COMPANY, 310 WEST JACKSON, CHICAGO

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In the
United States Circuit Court of Appeals
For the Seventh Circuit

No. 8716

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Plaintiffs-Appellees,

vs.

RKO RADIO PICTURES, INC., A CORPORATION, LOEW'S, INCORPORATED, A CORPORATION, TWENTIETH CENTURY-FOX FILM CORPORATION, A CORPORATION, PARAMOUNT PICTURES, INC., A CORPORATION, BALABAN & KATZ CORPORATION, A CORPORATION, VITAGRAPH, INC., A CORPORATION, WARNER BROS. PICTURES, INC., A CORPORATION, WARNER BROS. CIRCUIT MANAGEMENT CORPORATION, A CORPORATION, AND WARNER BROS. THEATRES, INC., A CORPORATION,

Defendants-Appellants.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

THE GUNTHORP-WARREN PRINTING COMPANY, 310 WEST JACKSON, CHICAGO

TRANSCRIPT OF RECORD FILED NOV. 14, 1944.

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Defendants-Appellants.

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2065 WALTER KUEHNLE, called as a witness on behalf of Balaban & Katz Corporation and Paramount Pictures, Inc., being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Goldberg.

Q. Will you state your name, please?
A. Walter Kuehnle.
Q. And where do you live, Mr. Kuehnle?
A. 3500 Lake Shore Drive.
Q. What is your business or occupation?
A. Real estate appraiser and consultant.
Q. What is your business address?
A. 140 South Dearborn Street, Chicago.
Q. How long have you been engaged in that business?
A. At my present business, W. R. Kuehnle & Company, since 1935; in the real estate business, in various parts of it, various branches of it, and various branches of the appraisal business and appraisal of real estate sale, and so forth, since 1922.

2066 Q. What experience have you had with respect to making appraisals?

A. Since 1922—in 1928, I was engaged in the general real estate business under the firm name of G. A. Kuehnle & Son, with my father.

1928, I went with the County and assisted in the re-assessment, appraisement of all lots and buildings in Cook County. I was assistant superintendent of the land department, in charge of all land in Cook County. Later I was superintendent of appraisals of all land in Cook County.

Then in 1931, I went with the firm of Harry S. Cutmore & Associates. I was a director and officer of that firm, and in that capacity, had charge of supervising appraisal assessments of all closed banks in Cook County. I also had out-of-town assignments, which I supervised.

Then in 1932, I was called back by Mr. J. L. Jacobs, who became assessor of Cook County, and had charge of all land and buildings in Cook County for tax purposes. I stayed there until 1935, January of 1935, when I formed my own appraisal organization, W. R. Kuehnle &

2067 Company, and have been in that business ever since.

Incidentally, in that capacity, we have appraised

millions of dollars worth of property for the appraiser representative of insurance companies, appraising property for mortgage loan purposes, and appraised properties for a great many other companies.

At the present time I am general chairman of the Appraisal Committee of Chicago Real Estate Board. In that capacity, I supervise all appraisals which the Board makes for fees, which will probably amount to some twenty-five million dollars this year.

Professionally, I have been a former vice-president and chairman of sales of the Chicago Real Estate Board, and member of the National Examining Committee of the American Institution of Appraisers, a professional appraisers' organization.

I think that, in a general way, covers my business experience and qualifications, except my teaching in the
appraisal course given by the American Institute of
2068 Appraisers, and also, the Y. M. C. A. Center College of Commerce.

Q. Have you contributed any articles on the subject to any magazine?

A. Yes.

Q. What magazine?

A. The Journal of the American Institute of Appraisers, Journal of Land Economics of the Northwestern University, and the official text that is used by the American Institute of Real Estate Appraisers for their official courses given in various universities in the country.

Q. Mr. Kuehnle, have you, at the request of the defendants in this case, made a study of certain theatres on the South Side?

A. Yes, I have.

Q. The location of which theatres have you so studied?

A. The Tower, Tivoli and Avalon, the Maryland, the Jeffery, the Shore, Jackson Park, and the Grove.

Q. In your opinion, Mr. Kuehnle, do the theatres which
you have studied, fall into any general classification?
2069 A. Yes. As I told you, I believe they fall into two general classifications: first, the larger and more elaborate houses that are more luxurious in appointments, have a larger number of seats, are more centrally located to serve wider areas.

The second group are those theatres that are located within certain communities, of smaller size, theatres of

smaller size, located within certain communities, that serve those communities.

Q. Which of the theatres which you have studied, in your opinion, fall into the first classification,—namely, the large de luxe theatres capable of serving larger area and of greater patronage?

A. The Tivoli, Avalon, and Tower.

Q. And which, in your opinion, fall in the smaller classification, serving primarily intermediate communities?

A. The other theatres are of the size,—the balance of the theatres I mentioned are of the size that make them primarily a type of theatre serving certain communities.

Q. Mr. Kuehnle, are you familiar with the type
2070 of business centers which exist on the South Side of Chicago?

A. Yes, I am.

Q. What is it that makes a business center good or bad?

A. Well, a business center is good, first, in proportion to the community it serves, its central location, the type of merchants that you find in the street. Your better grade stores will be located on your better streets.

A number of the stores, for example, when people go shopping, they like to go from one store to another. Let us take, for example, Ladies' Wear. If they have ten or fifteen, twenty or thirty stores that they can select from, if they don't like what one store has, they go from one to the other to shop. That goes to the extent.

My answer is that only two things would be important; the rental paid, the character of merchandise and such need as transportation, which make it convenient; which perhaps is why there are a great number of stores there in the first place.

2071 Q. Mr. Kuehnle, I call your attention to the map which appears before you, the map appearing on the left side, which was introduced in evidence as Balaban & Katz-Paramount Exhibit 6. I will ask you if you know who prepared that map?

A. The map on the left?

Q. That is right.

A. I did. I had it put together, but that map represents pages that are taken from the Land Use Survey of the Chicago Plan Commission. I have another copy of the book with me. The reason I pasted it together in that

fashion is, it is confusing to follow from page to page. I put the page together with a cover to hold the area in question.

Does that answer the question?

Mr. Goldberg: Yes. Thanks.

Q. You have used the expression, Mr. Kuehnle, "Community Center", or "Communities". Will you describe what a community is?

A. A community is a natural area that is brought together because of the type of population, because of natural transportation advantages; and generally, because of certain natural boundaries that sort of tie it in 2072 and make it appear as one community.

After all, the city of Chicago is nothing but a lot of small towns put together. Each community you might liken to a small town having its own shopping center, its own business men's association, and its own community areas. We have a number of them in the city of Chicago.

Q. Did you have any definite way of determining the boundaries of any specified or particular community?

A. Those community areas are definitely fixed at this time. The Chicago Plan Commission has outlined and approved in the Department of Census, Such areas are involved here as the Woodlawn and South Shore. There is a definite publication by the Chicago Plan Commission that shows exactly the outlines of what has been designated as that community.

Q. In making your survey, Mr. Kuehnle, of the location of these theatres which I have mentioned, will you please state in general what studies you made,—the character of your investigation?

A. Well, I visited all the theatres and analyzed 2073 the community area in which they were located; if they served a community area; if one of the community area theatres, which community area they served; their location and convenience in having to serve that particular community.

I analyzed the particular business centers of those communties to determine which was the principal business center of the community; in other words, that portion which seemed to be most convenient for most of the people to come, as evidenced from the fact that it had grown into the principal business street of the community.

With reference to the larger theatres, I studied them

from the standpoint of their convenience of location to serve the wider areas, that they were able to serve by virtue of size and other features.

Q. Did you make any check to determine the number of stores in the business locality in which each of the theatres is located?

A. Yes, I did. Having first determined the principal business street in each one of the community areas, I made a complete analysis of the number and kind
2074 of stores in each one of the areas.

Q. Did you make any check with respect to the variety of stores that can be found in the district in which each theatre is located?

A. Yes, that is right. I made an analysis of the number of each kind of store in each community.

Q. Did you make any investigation in connection with the rental paid by the stores in each community?

A. Yes. I made an investigation of the rentals paid by the stores in these community-sized areas.

Q. Will you describe the nature of the location in which the Shore Theatre is located?

A. The Shore Theatre is located on the southeast corner of the South Shore district. I wonder if I may point to that on the map.

Q. Surely.

(Witness leaves the stand and goes to the map.)

A. I think I could explain a lot more simply from the map than I could verbally. I have outlined on this map, or attempted to in a rough way, by strings, the
2075 various official community areas of the city of Chicago.

This string here, taking this area in here (indicating), represents the South Shore district of Chicago. The Shore Theatre—

Q. Mr. Kuehnle, would you describe for the record, the boundaries of the districts as you speak of them?

A. Yes. The South Shore district is bounded,—I said a moment ago that these districts generally grow out of a normal area. I would call your attention here, that the normal area of the South Shore district is Jackson Park on the north. That is the end of the district here. On the west,—this is east and this is Lake Michigan out here. On the west it is bounded by the railroad which crosses here at a place known as Grand Crossing of the Illinois Central and the New York Central Railroad at this

point, which is 75th Street. So these are railroads. These principal railroad tracks form the western boundary of the community area of the South Shore district. Then
2076 the area goes straight east along 79th Street with Lake Michigan.

Now, the Shore Theatre is located at 75th Street and Exchange Avenue, at this point.

Q. Have you put a tack on Balaban & Katz-Paramount exhibit to indicate the location of the Shore Theatre?

A. I did. This map shows the various buildings in Chicago; the light red indicating residences, and the heavier red in general indicates apartments. So the redder it is and appears, that means the more heavier built up the area is.

You will notice that the southeast corner of this South Shore district is quite heavily built up. You will notice that the Lake also slants here. This is South Shore Drive, which is the end of the street, at 71st Street. As you go north to 79th Street, you will notice, too, it is quite heavily built up there with apartments. With the shift of the population and the building up of this area in the 1920's, this area became more heavily populated; so the Shore Theatre now serves that southeast portion of the community area of South Shore, and may slip over a
2077 little bit into South Chicago, which is on the south.

I think that will answer your question about the Shore Theatre.

Q. Will you describe the nature of the location in which the Grove Theatre is located?

A. You jump out of the community area of the South Shore to do that, and go into the community area of Grand Crossing. Grand Crossing goes a little farther than this map. I will ask you to picture that it goes about a mile farther in this direction of State Street. No, two or three more blocks in this direction.

The Grove Theatre is located at 75th Street and Cottage Grove Avenue, in the business center of Grand Crossing, the community area of Grand Crossing at this point. This is 75th and Cottage Grove, and right here is the principal business district of Grand Crossing. As a business district, it in no way compares to 63rd Street, isn't even as good in some respects as 75th Street; but whatever it is, it and 79th Street over here, two blocks
2078 away, are the business district of the community area of Grand Crossing.

Now that, I think, I have generally described. In other words, it is that area which has proven by the growth of business, to be most conveniently located to serve the people in Grand Crossing.

Q. Will you describe, Mr. Kuehnle, in general the location of the Maryland Theatre?

A. The Maryland Theatre is located,—now we jump to the community area of Woodlawn. Woodlawn is one of the oldest community areas in Chicago. This dates back to the World's Fair of 1893. Many of the old buildings in this area are still buildings that were built at that time. It is a very densely populated area and very heavily built-up area, as you can see by noticing the shading of red, the deeper red, as compared to the area here where it is very light, indicating that most of the residences are vacant.

The Maryland Theatre is located on 63rd Street, a block and one-half east of Cottage Grove Avenue, on 63rd Street, a business street. 63rd Street is one of the
2079 principal business streets in Chicago. It is a very long buisness street, extending from Cottage Grove Avenue over to Stony Island. At this point it is about a mile long.

My recollection is, it has over 300 stores, serving all different kinds of merchandise; for example, I believe my recollection is that there are 42 stores on 63rd Street, selling women's wear.

Now, the Maryland Theatre is located in that district between Cottage Grove and Woodlawn in this section, which has somewhat of the finest stores that are found in any business section outside of the central business district. For example, O'Connor & Goldberg are in the building just to the west of the Maryland Theatre, and has one of the finest stores you will find in the city of Chicago outside of the Loop. It is a strictly downtown State Street type of store and they pay a tremendous rental.

As I said before, in answer to your question, Mr. Goldberg, you asked me what I considered in these areas.
2080 I said the type of stores, and extent of the district.

In extent, 63rd Street has no peer as to the variety of stores. It is centrally located to this Woodlawn area, but it is a little bigger than the average community center. It serves not only Woodlawn, but it serves wide areas outside.

Here (indicating) is the Illinois Central Railroad, South Chicago branch. Here (indicating) is the South Shore Electric Railroad coming into Chicago. All through trains from the east stop at 63rd Street, and south, for that matter. They all stop at the 63rd Street station. There are a great number of people come to 63rd Street from far distances, all the way from Gary, Indiana, and South Chicago, because here they find this great collection of stores of every type, where they can find exactly the type of merchandise they want.

So 63rd Street is more in itself,—although it is the principal business district of its community, it also serves a wide additional area, which accounts for the number of stores and the character of many of them. Inci-
2081 dentally, 63rd Street also is served by many kinds of transportation; the 63rd Street car, Cottage Grove street car, the elevated railroad on 63rd Street, Illinois Central suburban service servicing Chicago, and the north and south suburbs. You have street cars that go to South Chicago. I think there are six or seven different branches of street cars from what we call,—we are pleased to call it the Chicago area, which takes in Gary, Indiana, as far south as that. Sometimes the people in Gary object to that. They like to be classified as having their own community area, but in Chicago, we like to think that parts of Indiana are really the Chicago area.

I think that covers 63rd Street district in a general way.

Q. Now, Mr. Kuehnle, will you describe in a general way, the nature of the location of the Jeffery Theatre?

A. The Jeffery Theatre is located in the 71st Street shopping center, which is on 71st Street and runs approx-
imately from Bennett Avenue to South Shore Drive.
2082 It is located here (indicating). You will notice then that the Jeffery Theatre is located in the center of the community area of South Shore. Here is the community area of South Shore (indicating).

The fact that it is located in the center of the population, I would like also to point out.

71st Street from Bennett to South Shore Drive, did not grow up accidentally. There was a reason behind that growth. Originally the business center was at Stony Island and 67th Street. During the 1920's,—originally this Illinois Central Railroad,—by the way, a branch of which is indicated by following my pencil, going downtown, has more

suburban service than anywhere in the United States. It went down 71st Street and ran down the middle of the street. In 1923, I remember, steam locomotives ran up and down that street; and later, about that time, they electrified the Illinois Central, which gave 71st Street a big boost.

Prior to that time, it was also unpaved. They paved 71st Street, and during the '20's, this South Shore 2083 area built up, and built up in this quadrant here (indicating). In other words, between the Park and— you will notice how much redder that is on the map than other areas. It is solidly built up with apartment buildings called multi-storied buildings, housing a large number of people.

With the growth and intensive development of that district, the business district began to shift, and 71st Street grew by leaps and bounds, as a business district. The business center of the South Shore district, from where it was located, shifted to this point to serve not only that new district, but the district to the west of it, to Cottage Grove, but also areas to the south. It is completely located in the center of the population to serve that entire community area. As a result, stores, many fine stores, were built. In this particular block, South Shore Drive and 71st Street, we have a building, a multi-storied building on the corner, including offices. I think it is a six-story building, and two stories in this 2084 part down to Oglesby Avenue, again housing some of the finest shops that you can find in local business, as Sally's Frocks, David's Shoes, many high-grade dress shops, hat shops, shoe stores, and other high types of retail trade.

Even after 1936, there were a lot of stores built on 71st Street, but generally after the last depression in 1932, there has been very little building of any kind of retail property in the city of Chicago in your older districts. It is only the newer growing live districts that have any new development. There were quite a few new stores built along 71st Street.

One of the principal indications of the importance of 71st Street, as far as central location is concerned, is this new combination bowling alley and amusement center they built there. It is really a beautiful building, with 32 bowling alleys in line, and an enormous dining room and cock-

tail lounge run by Martin's, who have two beautiful places downtown in Chicago.

I might add that while 71st Street has both sides of the street, one may be designated as the business
2085 side. The north side of 71st Street is the business center. The south side is not as good. The principal stores are on the north side.

However, that has no particular significance as far as the location of the Jeffery Theatre is concerned. The Jeffery Theatre would be just as well off located on the poor side as the better side of the street. The fact that it is located in the important center where the shops are located, is enough. That shows that it is centrally located, or the fine shops would not have sprung up in that location.

I think, in general, that covers the location of the Jeffery Theatre.

The Court: We have finished 71st Street. Suppose we adjourn until 10:30 tomorrow morning?

(Whereupon the trial of the above entitled case was continued to Wednesday, March 1, 1944, at the hour of 10:30 o'clock a. m.)

2086 In the District Court of the United States.

* * (Caption—) * *

Before Igoe, J., and J., Wednesday, March 1, 1944, 10:30 o'clock A. M.

Court met pursuant to adjournment.

Counsel present:

Mr. McConnell,
Mr. Korfist,
Mr. Adcock,
Mr. Goldberg,
Mr. Seeley,
Mr. O'Brien.

Mr. Goldberg: I just talked to Mr. Kuehnle at twenty minute after ten. His office is rigid across the Street. He said he was coming right over. He is not here; he probably will be in half a minute.

The Court: Half a minute?

2087 Mr. Goldberg: He should be, sir. You know it is 10:30. I talked to him at 10:20. His office is across the street in the Marquette Building. May I have a minute to call him? I am sure he is on his way.

The Court: Do you want to say something, Mr. Seeley?

Mr. Seeley: Your Honor, I have here a very short, two or three page part of Mr. Osserman's deposition. It occurred to me that we could use these few minutes to offer that, and not waste the time.

The Court: Is that all right with the rest of you gentlemen? Is that all right with you, Mr. McConnell?

Mr. McConnell: Yes, it is.

The Court: All right.

Mr. Seeley: I will read both the questions and answers, because it is so short.

(Mr. Seeley here read from the deposition of Jack Charles Osserman, as follows:—

2088 Mr. Seeley: This is the further deposition of Mr. Osserman, whose deposition, taken on behalf of the plaintiffs, was previously read. This part of his deposition was taken on behalf of RKO Radio Pictures:

"Q. Mr. Osserman, do you have knowledge of any agreement or understanding between RKO Radio Pictures and any other distributor or distributors of motion pictures, with respect to the manner in which RKO Radio Pictures shall license the exhibition in theatres of motion picture film which it distributes?"

Mr. McConnell: I object to that, if the Court please, on the ground that it called for a conclusion of the witness on the issues in the case.

The Court: I don't remember what the question was. Read that again, please.

Mr. Seeley: (Reading:)

"Q. Mr. Osserman, do you have knowledge of any agreement or understanding between RKO Radio Pictures and any other distributor or distributors of motion pictures, with respect to the manner in which RKO Radio Pictures shall license the exhibition in theatres of motion picture film which it distributes?"

2089 The Court: The objection is overruled. He may answer.

Mr. Seeley: (Reading:)

"A. No, I don't.

"Q. Do you know of any agreement or understanding between RKO Radio Pictures, Inc., and any other distributor of motion pictures as to the playing position which the Jackson Park Theatre shall have in the City of Chicago?"

Mr. McConnell: I object to that for the same reason.

The Court: The same ruling.

Mr. Seeley: (Reading:)

"A. No, I do not.

"Q. Aside from any clearance provisions which are in effect from time to time, in film license agreements between RKO and certain exhibitors of motion pictures in the City of Chicago, do you know of any agreement or understanding between RKO and any other exhibitor with respect to what the playing position of the Jackson Park Theatre shall be when it plays RKO Radio Picture films?"

Mr. McConnell: I object to that for the same reasons.

The Court: Same ruling.

2090 Mr. Seeley: (Reading:)

"A. No, I don't."

That was the end of my part of it.

Mr. O'Brien: You go ahead.

Mr. Seeley: There were some somewhat similar questions that Mr. O'Brien asked at the same time.

The Court: Are they just as short?

Mr. Seeley: They are only two pages.

The Court: All right; let us finish this up.

Mr. Seeley: (Reading from deposition:)

"Mr. O'Brien: Q. Do you know of any agreement, understanding or conspiracy, continuing, or otherwise, between the defendants, or any of them, to maintain, in the City of Chicago, or its environs, a system of licensing motion picture film for exhibition in theatres owned, leased or operated by any of them, or by their subsidiaries or affiliates, or any theatres owned, leased or operated by any other person, firm or corporation in the City of Chicago and its environs?"

Mr. McConnell: I object to that for the same reason.

The Court: I am going to let the answer go in. Personally, I can not see how those questions and an-

2091 swers are very material, whether this man knows about it or not. But I rule that the answer may go in.

Mr. Seeley: Our position is, that it depends upon the position he is in to know about it. If he is in position where he would have known, that gives a value to his answer.

The Court: I understand, but whether he says he knew about it is not determinative of this lawsuit.

Mr. Seeley: No; it is just determinative of how much he knew.

The Court: The answer is in.

Mr. Seeley: (Reading:)

"A. No, I don't.

"Q. Do you know of any agreement, understanding, or conspiracy between the defendants, or any of them, whereby, in the releasing of motion picture films for exhibition in the City of Chicago and its environs, theatres owned, leased or operated by any of said defendants or by their subsidiaries, or any of them, are given or were to be given preference and priority in the exhibition of motion picture films over independent or other theatres with respect to run or clearance?"

Mr. McConnell: Same objection.

2092 The Court: Same ruling.

Mr. Seeley: (Reading:)

"A. I don't.

"Mr. O'Brien: Do you know of any demand or request made by the owner or operator, or on behalf of the owner or operator of the Jackson Park Theatre, that feature motion picture film be licensed by the defendant RKO Radio Pictures, Inc., or by Loew's, Inc., Paramount Pictures, Inc., Twentieth Century-Fox Film Company, or Vitagraph, Inc., in a playing position prior to the first week of general release, being the tenth week after the end of the picture showing in any first Loop run?"

Mr. McConnell: I objected to that as being immaterial as to whether he knew or not.

The Court: All right: the same ruling.

Mr. Seeley: (Reading:)

"A. No, I don't.

"Q. Do you know of any agreement, understanding or combining of the defendants or any two of them with respect to introducing double features in theatres owned or operated by the defendants?"

Mr. McConnell: Same objection.

2093 The Court: Same ruling.

Mr. Seeley: (Reading:)

"A. No, I don't."

(Addressing Mr. McConnell:) We will skip that part.

The Court: Is that all?

Mr. Seeley: That is the end, yes, sir.

The Court: All right; where is our missing witness? Step up here, Mr. Kuehnle, we are ready for you.

Mr. Kuehnle: I am very sorry, your Honor.

The Court: You did not bother us. We went ahead with something else.

2094 WALTER KUEHNLE, a witness called on behalf of Paramount Pictures, Inc., having been previously sworn, resumed the stand and testified further as follows:

Direct Examination by Mr. Goldberg (Resumed)

Q. You are the same Mr. Kuehnle who testified in this matter yesterday, are you not?

A. I am.

Q. Yesterday, when Court adjourned, Mr. Kuehnle, you had discussed the nature of the location of the Jeffery Theatre on 71st Street and I believe you stated you had completed your answer. Will you please describe, in the same general way, the nature of the location of the Jackson Park Theatre?

A. Yes. I think I had better continue.

Q. If you will, please.

(The witness here testified standing immediately in front of RKO Paramount Exhibit 6:)

The Witness: I think I will move this up a little closer. It is so small it is hard enough to see it as it is.

The Jackson Park Theatre is located on Stony
2095 Island Avenue between 67th Street and 68th Street.

I am going to put this black tack on the map to indicate the location of the Jackson Park Theatre. Now this area developed, oh, around 1916. At that time there was an old picnic grove on this corner (indicating). There was not much development over here.

Mr. Goldberg: Well, Mr. Kuehnle, will you describe the corners and spots you are talking about, please?

The Witness: On the corner of 67th and Stony Island, which is the site of the location of which the Jackson Park Theatre is a part, or the approximate location of that black tack, was an old picnic grove in 1916, and the present building was built with the Jackson Park Theatre on it

and this street more or less developed as the business street serving the community area of South Shore. That was before the area to the southeast portion of the community area of South Shore and the area to the east of Jeffery Avenue developed.

At that time there were very few buildings, dwelling units in that area between Jeffery and the lake. Therefore, people came from all this area of South Shore
2096 to shop at the shopping center at the corner of 67th and Stony Island Avenue, but, with the development of the area to the southeast and the subsequent development on 71st Street, from Jeffery Avenue to South Shore Drive, another area developed, which turned out to be a superior shopping center and a superior location, drawing superior type of business, superior shops, and so more convenient, being located in the center of population.

You will note, from looking at the map, that if we take a square mile in which the Jackson Park Theatre is located that you will get something like this: In the northeast corner you have nothing, no people at all. You have a park. In the southwest corner you have a cemetery. So that means that the immediate supporting population would be the northwest quarter, which is served by the business district of Woodlawn, and the southeast quarter, which is served by the 71st Street shopping center.

I would like you also to note that this light portion in here, that is Jackson Park Highlands. It is built up
2097 with fine residences. There are as few in some blocks here as seventeen families to the block.

Mr. Goldberg: Q. Will you describe the boundaries of the Jackson Park Highlands section you are mentioning?

A. The Jackson Park Highlands Section runs generally from Euclid to Cregier. It begins two blocks west of the—three blocks west of the Jackson Park Theatre location and runs for approximately three blocks.

Mr. Goldberg: Do you mean west of the Jackson Park Theatre or east?

The Witness: East, east of the Jackson Park Theatre; did I say west? I am sorry. East of the Jackson Park.

Mr. O'Brien: It runs west or east?

The Witness: How?

Mr. O'Brien: You said it ran west.

The Witness: It goes east, that is right,—and from 67th to 71st Street, that is indicated by the lighter red on this

map. That light red means residences; the heavier red means apartments—as compared to over here, as many as
371—301 families to the block.—

2098 Mr. Goldberg: Q. Where is that?

A. —located, for example, in the block on South Shore Drive from 70th Street to 69th Street.

Now, Stony Island Avenue has various types of business, but, in the first place, does not have the extent of business that the other main shopping centers have, the other two principal shopping centers have. That is, it does not have the number of stores and it does not have the length to be an important business center. I think that map, which I am somewhat familiar with,—

Q. You are referring now to B. & K. Paramount Exhibit 4, 4-A and 4-B?

A. That is right,—shows the Jackson Park shopping center, located from 71st to 67th Street, approximately, and then, going east on 67th Street, the Illinois Central Railroad. Well, now, the principal shopping district in area is only two blocks long. It only goes from 67th to 69th. The stores on 67th Street are very cheap stores. The stores south of 71st Street are very cheap and poor stores—south of 69th Street to 71st Street are very cheap and poor stores.

Mr. McConnell: I object to the characterization of
2099 cheap and poor.

The Court: Well, as a resident of the South Side, I will sustain the objection.

The Witness: Let me say that the stores are of a character of a low rent group, that do a low volume of business, which is probably a much better characterization of the type of stores they are.

Now, one of the principal reasons that this business section stops at 69th Street is the fact that at that point Stony Island Avenue, going south, widens about 100 feet, so it has a total width of about 200 feet. In other words, there is a physical change in the character of the street. That and the limitations of the immediate supporting area.

I think in general that describes the 67th and Stony Island shopping center.

Mr. Goldberg: Q. Mr. Kuehnle, you have already described the location of the Maryland Theatre. Is the Tower Theatre located in the same business district in which the Maryland Theatre is located?

A. Yes, the Tower Theatre is located in the Woodlawn shopping center.

Q. Now, if I asked you to describe the nature of
2100 the location of the Tower Theatre, would you say in substance that your reply would be the same as it was for the Maryland, or are there any substantial distinctions?

A. The only distinction is that it is located at the east end of the 63rd Street shopping district, the Woodlawn shopping district, while the Maryland Theatre is located at the west end. However, the character of the stores around the Tower Theatre is not as good as the character of the stores around the Maryland Theatre. In other words, shopping is more intense. However, it is part of the same general center and, especially important is the fact that it is served by all these transportation facilities. It is just a block from the Illinois Central Railroad, the elevated railroad, the various street cars that serve the 63rd Street and the Woodlawn shopping centers,—the Stony Island Avenue street car. There are all these fine transportation facilities. The Tower Theatre is centered convenient to them.

Q. Are you through, Mr. Kuehnle?

A. With the Tower Theatre.

Q. Except for the distinctions which you have
2101 made, does the reply which you gave to the location of the Maryland Theatre also apply to the Tower Theatre?

A. Yes.

Q. Will you please describe the nature of the location of the Tivoli Theatre?

A. Well, the Tivoli Theatre is located around the corner from the Maryland Theatre, as indicated by that green tack which I am placing on the map. It is on Cottage Grove Avenue between 63rd Street and 64th Street. It also is located conveniently to serve the wide area necessary because of its size and character.

It is also located conveniently to transportation facilities, Cottage Grove, 63rd Street, the elevated lines, and so forth. For a theatre of this character it does not matter if it is located exactly next door to the finer shops; if it is located within a block or around the corner from such an intensive area, the existence of the intensive area proves it is convenient for a large number of people to go there;

and as long as that theatre is convenient to that immediate area,—in other words, what I am trying to say is that the Tivoli Theatre, around the corner from 63rd Street, is located just as well as if it were on 63rd Street, and
2102 half a block distance.

Q. And this business area you are discussing is the same business area in which the Maryland and Tower Theatres are located, is it not?

A. That is true.

Q. Except for the distinctions you have pointed out, which your answer with respect to the Tivoli Theatre be substantially the same as it was with respect to the locations of the Maryland and Tower Theatres?

A. Yes.

Q. Will you please describe the location of the Avalon Theatre?

A. The Avalon Theatre is located on 79th Street, just east of South Chicago Avenue and Stony Island Avenue. I will place this tack, this large green tack at the location. Incidentally, you will notice I have those large green tacks for the large de luxe type theatres.

Mr. McConnell: Well, I object to his taking different sizes of tacks here. If he wants to point out where—

The Court: It would be a good idea if you were to confine yourself to testimony as a real estate expert. Never mind the size of the tacks.

2103 Mr. Goldberg: Q. Well, Mr. Kuehnle, do you have the same type tacks to substitute for the large ones?

The Witness: I think so, yes.

The Court: Well, they're in there now. Let us not stop for that. What he criticized was his description of what the tacks represented.

Mr. Goldberg: Oh, I see.

The Witness: The Avalon Theatre is located, as you will note, at the hub of six corners, the intersection of three streets, South Chicago Avenue, making it tapping the area to the southeast and to the northwest; Stony Island Avenue tapping the area to the north and to the south; 79th Street tapping the area to the east and to the west; therefore giving it a strategic location for a theatre, a de luxe type theatre with a large number of seats as capable, by the nature of its plant, to serve a large number of people.

I think that in general describes the location of the Tivoli.

Mr. Goldberg: Q. Mr. Kuehnle, based on your experience and on the studies which you have made, do you have an opinion as to whether the location of the Jackson Park Theatre is superior or inferior to the location of the
2104 Shore Theatre?

A. Well, I believe—

Q. Do you have an opinion, first, Mr. Kuehnle?

A. Yes, I do.

Q. What is that opinion?

A. I believe that the—

Mr. McConnell: Well, I object to the question in its present form. It is a very general question—"superior." It might be superior, for one thing, on something not material in this case at all.

Mr. Goldberg: No, I think I confined the question to the location.

The Court: What he means is, is it superior from the standpoint of the theatre. That is what your question means?

Mr. Goldberg: That is right, your Honor.

The Court: The objection is overruled. What is your opinion?

The Witness: I believe that the location of the Shore Theatre is superior.

Mr. Goldberg: Q. Will you state your reasons or basis for that opinion?

A. My reason is that the Shore Theatre has this entire area to the southeast. It has a local shopping center
2105 serving that southeast part of the community area of South Shore. It does not have to share its business and customers with anyone to the south.

I also base it upon—as shown by the map here—the general area which it serves, the extent to which it is built up.

Q. Based on your experience and on the studies which you have made, Mr. Kuehnle, do you have an opinion as to whether the location of the Jackson Park Theatre is superior or inferior to the location of the Grove Theatre, as a theatre?

A. Yes, I do have an opinion.

Q. What is that opinion?

A. That the location of the Grove Theatre is superior to the location of the Jackson Park Theatre.

Q. What is the basis or reason for your opinion?

A. Because the Grove Theatre serves the community area of Grand Crossing. It is located in the business center in and adjacent to the business center of the community area of Grand Crossing, and, as such, is a theatre that serves and can best serve that area.

Q. Do you have an opinion, Mr. Kuehnle, based on
2106 your experience and on your studies with respect to the superiority or inferiority of the location of the Maryland Theatre to the Jackson Park Theatre, as a theatre?

A. Yes, I do.

Q. What is that opinion?

A. Well, first, from the standpoint—

Q. Will you state your opinion first, please? What is your opinion? Which is better?

A. That the Maryland Theatre is superior.

Q. Will you state your basis or reasons for that opinion?

A. In the first place, based on the community which it serves, of Woodlawn, it is located in the principal business section, the principal business street located in the community area of Woodlawn.

Now, let us take the matter of transportation first. The Maryland Theatre is served by the elevated, it is served by street cars; the 63rd Street business section is served by the Illinois Central Railroad. It draws a large number of people to that area. The sales volumes of even a comparable store of the same kind and size would be greater in a store located on 63rd Street, in the 63rd Street
2107 business district, than a similar store of the same size selling the same kind of merchandise would be on Stony Island Avenue between 67th and 69th Street. The stores themselves are not even comparable with the stores on Stony Island Avenue between 67th and 69th.

Now, I have some photographs here that I think will illustrate the type of stores that are located on 63rd Street.

Mr. Goldberg: Mr. Kuehnle, may I interrupt—

Mr. McConnell: I object to the use of the photographs here.

The Court: The objection is sustained. I think we have gone far enough with his description of this street without putting in any photographs.

Mr. Goldberg: I was going to ask leave to offer them in evidence after they have been identified.

The Court: Well, you may ask leave and your offer will be refused. We have gone far enough. I don't think you have left much out, on any one of these streets, with any of these witnesses.

Mr. Goldberg: (Addressing the witness) Will you disregard the photographs?

The Witness: There is a bank located in the 63rd Street shopping district, the South East National Bank.

2108 There is no bank at the present time located on Stony Island Avenue between 67th and 69th, in this shopping area. I want to consult my memorandum now, here, as to the number of stores, the diversification of stores in this shopping area.

Mr. Goldberg: Which shopping area?

The Witness: The 63rd Street shopping center is much greater than on Stony Island Avenue from 67th to 69th. Now I have some actual figures here on actual count of business type of stores in the Stony Island area. I think I will save a lot of words if I refer to it as "Stony Island area" and the "Sixty-Third Street area" for example.

Mr. McConnell: I object to reading some document that is not in evidence here.

The Court: The objection is sustained.

The Witness: This, your Honor, is my memorandum which I made here and there are a lot of figures on different types of stores.

The Court: Well, your counsel knows how to put it in. He cannot put it in in just the way you are doing.

Mr. Goldberg: This witness has testified that he made a personal investigation.

2109 The Court: Do you want to put this in, or do you want him to testify from memory? He just cannot walk in here and start reading from a book.

Mr. Goldberg: Q. Can you testify as to the number of stores located on 63rd Street and at the 67th and Stony Island Avenue location from memory?

The Witness: A. Why, I could.

The Court: The question is can you do it from your memory? If you cannot, why say so; then he has another question to put to you.

The Witness: Well, I am not sure I understand the question. Generally, as to the total number of stores, I have a general recollection from making this survey, yes, but as to the exact number to one of each number of stores

of each type, no, because there are perhaps a hundred and fifty figures and I would have to be a genius to remember them all.

Mr. Goldberg: Q. Now, did you make a personal survey or was the survey made by someone under your direction and control of all of the stores in the 63rd Street shopping center and in the 67th and Stony Island Avenue shopping center?

A. Yes.

2110 Q. Was a memorandum made in connection with the making of the survey, listing the total number of stores and the number of each type of store which were found at that location and vicinity?

A. Yes.

Q. Do you have your memorandum with you?

A. I do.

Mr. Goldberg: May I have it, please?

(Document handed to counsel by the witness.)

Mr. Goldberg: Will you mark that sheet, just that one sheet, B. & K. Paramount Exhibit 7 for identification?

(Sheet so marked.)

Q. I will show you document marked B.&K. Paramount Exhibit 7 for identification, and ask you what that document is?

The Witness: A. That is a memorandum which I prepared based on a survey which I made of all the stores, various types of stores in the 71st Street shopping center, the 67th and Stony Island—67th to 69th Street on Stony Island Avenue, the 63rd Street or Woodlawn community area shopping center, and the 74th and 79th or the Grand Crossing community area.

Mr. Goldberg: Your Honor I would like to offer 2111 B&K Paramount Exhibit 7 in evidence.

Mr. McConnell: I still object to it. If he is using it to refresh his recollection,—you have not asked him whether he is refreshing his recollection. If he can, well then the document is not admissible.

The Court: Well, I thought that was what you were going to do, have him identify the document and then permit him to refresh his recollection and then testify from that. That is what I thought you were going to do.

Can you look at that document and refresh your recollection and then testify as to what is in it?

The Witness: Yes, your Honor.

The Court: That is as far as we have to go. Go ahead and look at it.

Mr. Goldberg: Mr. McConnell, would you like to see that B.&K. Paramount Exhibit 7?

Mr. McConnell: Are you offering it in evidence?

Mr. Goldberg: Yes, I have offered it in evidence.

Mr. McConnell: All right, I would like to see it, yes. Just this one sheet here?

Mr. Goldberg: Just the one sheet.

2112 Q. Will you continue with your answer, please, Mr. Kuehnle?

A. I mentioned the number and variety of stores.

To begin with, on Stony Island Avenue from 67th to 69th there are a total of 101 retail stores. On 63rd Street, in this 63rd Street shopping district of Woodlawn, there are 358 retail stores.

Now, let us take some of the types of stores.

There are six women's wear stores on Stony Island Avenue from 67th to 69th Street. There are forty-three women's wear stores on the 63rd Street shopping district. Now, that indicates, the great variety of stores, the superiority of the streets as a shopping location. And not only are the stores greater in number, but they are finer in character; there are many stores on 63rd Street of a character that you will find none of from 67th to 69th on Stony Island Avenue.

The rentals paid for those stores on 63rd Street are much higher than those on Stony Island Avenue. There are rentals paid that are far in excess—there are store rentals paid on 63rd Street that are far in excess of 2113 any store rentals paid on Stony Island Avenue.

I don't know if I have said this already, but a similar store, selling similar merchandise, of a similar size, would do more business on 63rd Street than that store would do on Stony Island Avenue.

I think that in general covers the comparison between the Stony Island Avenue and the 63rd Street Woodlawn shopping center.

Q. Are you acquainted, Mr. Kuehnle, with the amusement businesses located on 63rd Street and those located on and in the vicinity of 67th and Stony Island Avenue?

A. Yes, I am.

Q. Will you describe the amusement businesses in each of those two localities, please?

A. Well, for example, here on the corner of Drexel and 63rd Street (indicating), that is, the southeast corner, we have the Ballroom Moderne. It is a fine, ornate-looking, two-story building, that has many fine modern stores of the type you find on State Street and the big business centers, on the first floor. On the second floor there is a ballroom.

Over at 62nd Street and Cottage Grove Avenue, on the southeast corner, is the Tivoli—or is the Trianon Ballroom. There are two main ballrooms in Chicago,
2114 the Trianon and the Aragon. They are to the ballroom business what such theatres as the Tivoli and the Uptown Theatre are to the theatre business.

Mr. McConnell: I object to that comparison.

The Court: Now, Mr. Witness, you must be cautioned again. You are put on there to testify as a real estate expert. Now, please confine yourself to that testimony. You don't have to go off, rambling all over as to what your thoughts are.

The Witness: I am sorry, sir.

Mr. Goldberg: Q. Will you describe the amusement enterprises on each of those two locations, Mr. Kuehnle?

A. Well, the Trianon Ballroom is a fine, three-story building, containing a very large and beautiful ballroom. I mentioned that because the 63rd Street section, with so many people coming there, is an amusement center as well as a shopping center.

Q. Mr. Kuehnle, will you just give the names, at the moment, of the ballrooms and other types of amusements on 63rd Street, how many there are and what they are?

A. Well, we have—there are so many people buying there, there are quite a number of cocktail lounges, ballrooms—we have several smaller ballrooms in the
2115 area, as well as the two I have mentioned.

Q. Are there any other theatres on 63rd Street?

A. There are, yes. There are, I believe, eight theatres in this area altogether.

Q. And what are the amusement opportunities offered in the 67th and Stony Island location?

A. Well, there is the Jackson Park Theatre. There is a bowling alley located on the west side of Stony Island Avenue, between, I believe it is 67th and 68th—I believe it is between 67th Place and 68th Street, on the west side of the Street. There are a few cocktail lounges.

Q. Are you through, sir?

A. I believe that is the extent——

Q. Based on your experience and the studies which you have made, do you have an opinion as to whether the location of the Jackson Park Theatre is superior or inferior to that of the Jeffery Theatre as a theatre?

Mr. McConnell: I object to that.

I object to it on the ground that this witness has not shown that he is an expert on theatres; and to determine whether or not a theatre location is better than another one is certainly more involved than whether women's dress shops—

2116 The Court: Is this the same question, or are you starting all over again?

Mr. Goldberg: Oh, no, your Honor. This is the same question, and I believe this is the final theatre.

The Court: Is this the final theatre?

Objection overruled. He may answer.

The Witness: Would you read the question?

(Question read by reporter.)

A. I have.

Mr. Goldberg: Q. What is that opinion, Mr. Kuehnle?

A. That the location of the Jeffery Theatre is superior.

Q. And will you state the reason, or your basis for that opinion?

A. First, because of its location, closer to the center of population of the community area of South Shore, being more conveniently located for the people in that community area to reach, as evidenced by the fact of the great superiority of the shopping district over the shopping district of Stony Island Avenue, and the type of retail merchants located, the type of the stores and the rentals which they pay.

Because of the superiority of the transportation facilities. The Jeffery Theatre is located right at the
2117 Jeffery station of the Illinois Central Railroad, the suburban to downtown. The people from South Shore in this area (indicating), this whole square mile, of which the Jeffery is the center, must get off either at this station at Jeffery or the next station farther east, which is located at Yates—at South Shore Drive.

A store selling the same kind of merchandise in the same sized store would do more business at 71st Street than they would on Stony Island Avenue between 67th and 69th Street.

Q. Are you through with your answer, sir?

A. I believe that—

Mr. Goldberg: That is all the direct for this witness.

The Witness: I have here, Mr. Goldberg, the book you asked about (producing book).

Mr. Goldberg: Oh, yes—may I ask another question, your Honor?

Q. Do you have with you the original records from which the map marked Paramount B & K Exhibit No. 5 were prepared, or was prepared?

A. Yes, I have.

Q. And what is that original record?

2118 A. That is Volume 2 of the Chicago Land Use Survey made under the direction of the Chicago Plan Commission.

Q. Will you state very briefly what the Chicago Plan Commission is?

A. The Chicago Plan Commission is an official body of the City of Chicago. Its Chairman is appointed by the Mayor, and they make plans for the future growth of Chicago, that is—they make plans that the growth of Chicago may be proper; they make studies as to the existing uses of land.

Q. How long has that organization been in existence, if you know?

A. Oh, longer than I can remember.

Mr. Goldberg: I should like to offer, your Honor, the book which has just been described as the source book from which the map was made, in evidence as Paramount B & K Exhibit No. 7, I believe it is.

Mr. McConnell: May I see the book?

Mr. Adcock: It is 8.

Mr. Goldberg: Exhibit No. 8.

Mr. Adcock: Has it been marked yet?

Mr. Goldberg: No.

(Book referred to is thereupon marked Paramount B & K Exhibit 8 for identification, as requested.)

2119 The Court: What is the need of putting the book in evidence, if you have the map here?

Mr. Goldberg: Well, it is just confirmatory, your Honor—the source book from which the map was made. It has the original pages in it; it has the original interpretations of every mark that appears on the map which is in evidence.

If your Honor feels it is surplusage, we can withdraw the offer.

The Court: I do. You have the map in; I don't see the purpose of putting this big book into the record.

Do you want a recess before you start your cross-examination?

Mr. McConnell: Yes, sir.

Mr. Adcock: I think it is a book that should be in evidence.

Mr. Goldberg: Your Honor, may it be understood that it is offered in evidence, and if there is any objection, the objection is sustained to the offer?

The Court: Yes. You object to it, I take it, Mr. McConnell?

Mr. McConnell: Well, I see no point in cluttering up the record with it.

2120 Mr. O'Brien: I don't, either. Why don't you just ask the witness whether he knows the neighborhood—

The Court: That has been testified to by two or three of the witnesses. I don't see why they want that big book in the record.

Mr. McConnell objects to it, and I have sustained the objection.

Then we will all take a recess for about ten minutes.

(Thereupon a recess was taken, after which the trial was resumed and the following further proceedings were had:)

2121 Mr. McConnell: Do you want to come back on the stand, Mr. Kuehnle?

Are you going to cross?

Mr. O'Brien: I have some further questions on direct.

Mr. McConnell: Oh, all right.

The Court: Proceed.

Mr. O'Brien: I understand, if the Court please, that we have had a lot of description of this territory, and I also know that the jury saw the neighborhood. But there are some things that I want in this stenographic transcript, which haven't been mentioned.

I will make it short.

Further Direct Examination by Mr. O'Brien.

Q. Mr. Kuehnle, did your survey—does it disclose the percentage of vacancies in the district on 71st Street, and the percentage of vacancies on Stony Island Avenue and 63rd Street? I mean stores, of course. Does it?

A. Yes.

The Court: Stony Island and 63rd Street?

Mr. O'Brien: And 71st—that is, the Stony Island 2122 territory, the 63rd and the 71st Street.

The Court: Stony Island and 63rd?

Mr. O'Brien: No—Stony Island and 67th, yes, sir.

The Court: 67th?

Mr. O'Brien: Q. I mean the three business sections you have mentioned: 63rd Street, Stony Island, and 71st. Does it disclose it?

A. Yes, it does.

Q. And can you tell us what the percentage of vacancies of stores is on each of those streets or sections?

A. Yes, I can. Do you want me—

Q. Please do so.

A. We will start with 71st Street—71st Street shopping district, from—

Mr. McConnell: Before the witness goes further, I think I would like to note an objection.

The time involved in this lawsuit is from 1936, I think, July 27th, 1936, to July 28th, 1942.

Mr. Adcock: You mean July, 1937.

Mr. McConnell: '37, you are correct; and this question apparently calls for a comparison at the present time. I object to it as not material to the issues in this case.

The Court: Well, I suppose it is material as far 2123 as it goes.

Mr. O'Brien: That's right. I am not trying to prove—

The Court: Q. All he is asking for is the percentages, Mr. Witness. Now, can you give them?

A. Yes, your Honor.

Q. Well, what is the answer?

A. From Bennett to South Shore Drive, on the south side of 71st Street, which is where the principal shopping is located, is approximately eleven per cent as of the present time.

On Stony Island Avenue—

Mr. O'Brien: Q. Just a minute, now. You say on the south side of 71st Street?

A. On the north side of 71st Street, I am sorry—which is the principal side.

On Stony Island Avenue from 67th to 69th, which is also the best side, the vacancy is twenty-one per cent, in number of stores.

On 63rd Street, from Cottage Grove Avenue to Stony Island Avenue, the vacancy is from three to four per cent.

Q. You spoke of some cocktail lounges on Stony
2124 Island Avenue, south of 67th Street. Those are taverns, are they not?

A. Yes.

Q. There is a cocktail lounge, I believe, in the Southmoor Hotel?

A. Yes.

Q. Do you know what the average rentals per foot per year are for the stores in the same three sections?

A. Yes, I do.

Q. Will you state them, please?

A. Approximately, between 90 and $95 a front foot per year on Stony Island Avenue between 67th and 69th Street. That would be the east side of the street.

On 71st Street, between Bennett and South Shore Drive, between 130 and $135 per front foot per year; or around forty per cent higher.

On 63rd Street, about $150 per front foot per year.

Q. Going to the corner of 71st and Jeffery, can you tell us what stores are on the four corners?

A. Well, taking the south side of the street first, which is the principal business side—

Q. We don't care where—

2125 The Court: There are just four corners, Mr. Witness.

The Witness: Yes, sir.

The Court: That is all he asked you for: What are the stores on the four corners?

A. Take the southeast, is the parking lot for that new bowling alley, Martin's cocktail lounge and big restaurant in that bowling place that he has built.

Mr. O'Brien: Q. Yes. Well, that is a lot; there isn't any store there?

A. There is no store in there.

The southwest corner is a Liggett drug store.

The northwest corner is—I am sorry. The southwest corner is a Walgreen drug store. The northwest corner is the Jeffery Theatre building, which has the Liggett drug store on the corner, the Jeffery Theatre to the west, and the South Shore National Bank to the north on Jeffery.

Q. And across the street?

A. Across the street, on the northeast corner is a Walgreen drug store, what they call their—

Q. I don't care what they call it; it is a drug store?

A. Well, I mean it is more than a Walgreen drug store; it is a large, new Walgreen drug store that has just
2126 been completely built, and what they might call their Super Store, that's what I mean.

Q. You mean it is a large drug store?

Mr. McConnell: I object to what they might call it.

The Court: Q. It is still a Walgreen drug store, isn't it?

A. Yes, sir.

The Court: All right. Let's get on to something else.

The Witness: It is 40 by 85 or something in feet.

Mr. O'Brien: Q. Please, what are the drug stores on 67th and Stony?

A. There is one drug store at the corner of 67th and Stony Island.

Q. Is that the one in the Southmoor?

A. That is the one in the Southmoor Hotel.

Q. That is a Walgreen?

A. That's right.

Q. And in the past, over the past from 1937 to '42, were there other drug stores at those corners?

A. There were originally—yes, there was another drug store at that corner.

Q. Is that corner occupied or vacant at the present time?

2127 A. Well, that corner is—where the drug store was, in the southeast corner—

Q. That's right. Is it occupied or vacant now?

A. That's now vacant.

Q. Yes, sir, and what are the—how do the rentals compare at the drug store at 67th and Stony with those at the drug stores at 71st and Jeffery?

Mr. McConnell: I object to that. How could this witness possibly know what the rental is at 67th and Stony Island?

Mr. O'Brien: Well, if he knows.

Mr. McConnell: The best evidence would be the lease.

The Court: Does he actually know what these rentals are?

Mr. O'Brien: I think he does.

The Court: Q. Do you?

A. I—

Q. Not what you think they are. What they actually are, do you know?

A. I did not see the leases, your Honor. I made an investigation—

Mr. McConnell: I ask that his testimony go out about the rentals.

2128 Mr. O'Brien: Just a minute. We want to—

The Witness: I made an investigation, and went to the different agents and so on who rent these stores, and obtained the information from them; and that is the basis of my information.

Mr. O'Brien: The question—

Mr. McConnell: Well, I still object to it; that is hearsay.

Mr. O'Brien: Well, when you have finished.

The question at issue in the case is not what the rental value of the stores is, that is not what we are trying here; but as a collateral matter, an expert who has made such a survey is entitled to state, for such weight as it has. We don't ask anybody to determine the rentals on his testimony.

The Court: I thought he already has testified—

Mr. O'Brien: Not as to what these drug stores—

The Court: (Continuing.) —as to what the rental value of all the property along there was. Now, you want to get a question as to what the rental value of a drug store is?

Mr. O'Brien: Yes, of specific drug stores.

The Court: Unless he actually knows, I am going to sustain the objection.

2129 Mr. O'Brien: Well, he has stated the source of his knowledge.

The Court: I will sustain the objection.

Mr. O'Brien: I think that's all.

The Court: Mr. Seeley, do you have any questions?

Mr. Seeley: No questions, thank you.

Cross-Examination by Mr. McConnell.

Q. Mr. Kuehnle, were you employed to do this research by someone?

A. Yes, I was.

Q. And by whom?

A. Mr. Adcock.

Q. And on whose behalf, do you know?

A. The only thing I know was, from the record here, it seems to be the various people involved, the theatre distributors, the producing companies, and so on and so forth.

Q. What record are you referring to, the court record?

A. Yes, sir.

Mr. O'Brien: He is employed by the defendants, if there is any question about it.

Mr. McConnell: I am asking the witness.

2130 Mr. Adcock: He has stated at the start that he was employed by the defendants.

Mr. McConnell: Q. When were you employed?

A. About—oh, it must have been about four or five weeks ago.

Q. How long have you worked on it?

A. Over that period.

Q. Did somebody give you directions as to what you were to do?

A. No.

Q. Did they tell you what they sought to prove here in this case?

A. No. Mr.—do you want me to answer, do you want me to tell you what they did?

Mr. McConnell: Just answer my question, please.

The Court: The answer is "No". Put another question.

Mr. McConnell: Q. Did you talk to anybody except Mr. Adcock about it?

A. Yes.

Q. Who?

A. I talked to Mr. Goldberg, and I talked to Mr. O'Brien, and I talked to Mr.—the gentleman that prepared that map.

2131 Q. Mr. Quigley?

A. I talked to—

The Court: Mr. Goldberg, or Goodman?

Mr. Goldberg: Goodman.

A. Mr. Goodman. I talked to Mr. Quigley—in fact, I talked to everyone that might shed any light or be able to give me any information to assist me in arriving at my conclusions.

Mr. McConnell: Q. You thought that Mr. O'Brien and Mr. Adcock could shed some light on the problem?

A. I certainly did.

Q. How much are you being paid?

A. That has not as yet been determined.

Q. Have you had any discussion about it?

A. No, I have had no discussion at all about it.

Q. But you are to be paid?

A. Indeed I am.

Q. And for not only your research, but for your time here in Court, I take it?

A. That's right.

Q. No, when did you start cutting up this book that we have been talking about?

A. Well, I put the pages of that book together, probably about two or three weeks ago.

about two or thre eweeks ago.

2132 Q. Did somebody suggest that you do that?

A. No, no one suggested that I do it.

Q. That was your own idea?

A. That was my own idea.

Q. I notice you have got a rope on there, or a string around part of it?

A. That's right. That makes it handy to carry.

Q. You didn't get that out of a book, did you?

A. Yes, I did get that out of Volume 1 of that book.

Q. The rope, the string idea?

A. Not the rope, but the arrangement—it was necessary for me to superimpose the information in Volume 1 on Volume 2.

Q. And Volume 1 hasn't been offered here. Is that right?

Mr. Goldberg: I believe that is right. I would be glad to do so, Mr. McConnell, if you prefer it.

Mr. O'Brien: But you objected to one, so he didn't bother offering the other one.

Mr. Goldberg: I can get it.

Mr. McConnell: Q. Part of your data, then, came from Volume 1 of this work?

A. That's right.

Q. And the string part of your map purports to
2133 divide that section of your map up into different subdivisions, is that right?

A. The community areas, that's correct.

Q. Have you ever had any experience in operating a theatre?

A. No, I have not.

Q. Have you ever been employed by a theatre in any capacity at all?

A. No, I have not.

Q. Have you ever been employed by Balaban & Katz before as a witness?

A. No, I have not.

Q. Have you ever been employed by them in any capacity?

A. No, I have not.

Q. Or any of the defendants in this case?

A. No, I have not.

Q. Have you ever made any surveys of theatre attendance?

A. No, I have not.

Q. And you didn't do so in this case, I take it?

A. Yes, I did have the figures on the theatre attendance.

2134 Q. From the defendants?

A. From Mr. Adcock.

Q. Have you checked the play dates of any of these theatres yourself? Not from what you have learned in this case, but from your own research?

A. I am not sure that I understand your question, Mr. McConnell.

Q. Do you know what a play date is?

A. Well, only in a general way.

Q. Do you know what a run of a theatre is?

A. Yes, in a general way, I do.

Q. Do you know what clearance is?

A. What?

Q. Do you know what clearance is?

A. No.

Q. How far is the Jackson Park Theatre from the Jackson Park?

A. A half a—a quarter of a block.

Q. Now, the Jackson Park is an amusement center, is it not?

A. Jackson Park?
Q. Yes.
A. Well, it is a park.
Q. Well, people come there for their amusement, don't they?
2135 A. People come there, but certainly in the very low density.
Q. Well, why do they come to Jackson Park?
A. Well, perhaps to bring their lunch there—
Q. To enjoy the day at the park, don't they?
A. Maybe, go swimming.
2136 Q. Is there a bathing beach there?
A. Yes, the Jackson Park Bathing Beach, one-half mile east.
Q. It is part of the park, isn't it?
A. And about 65th Street.
Q. The whole idea of the park is to provide a place for recreation of the people, isn't it?
A. Mr. McConnell, I don't know much about the use of the park.
Mr. O'Brien: Speak louder, please, Mr. Kuehnle. I can't hear you back here.
Mr. McConnell: Q. You don't know anything about parks, is that it?
A. Oh, I guess every one knows about parks.
Q. You haven't given any consideration, then, as to the effect that Jackson Park itself would have upon the Jackson Park Theatre?
A. I most certainly have.
Q. All right. Jackson Park, then, is a recreation center, is it?
A. No, it is not a recreation center. It is a park.
2137 Q. All right. Now, what effect do you think it would have upon the attendance at the Jackson Park, if the Jackson Park was playing a picture such as "For Whom the Bell Tolls," and the Tivoli were playing a Western picture.
Mr. Seeley: I object to that as outside the scope of the direct examination.
The Court: The objection is overruled. I do not think you left much out of the direct examination.
Mr. McConnell: I think it has gone way beyond—
Mr. Seeley: He did not testify as an expert on motion pictures.

The Court: He testified as to the superiority or inferiority of one theatre as to another.

Mr. Seeley: As to location.

The Court: Overruled.

Mr. O'Brien: He did not put that interpretation on it before. We would not have acquiesced. All of our questions had to do with location, as to superior location, but not as to the physical makeup of houses or the operation of theatre business.

The Court: Proceed with your question.

Mr. McConnell: Read the question to the witness.

2138 (Question read by reporter.)

The Witness: A. I suppose that would depend on what the Western was.

Q. Well, have you any idea? Assume anything you want to about the Western.

A. All right. I will. If the same picture were being played in the same theatre, the same size theatre—

Q. I did not ask you that.

A. You asked me to assume anything.

Q. No. I said with reference to the Western. I did not ask you if the same picture was being played. Read the question again to the witness.

(Last question again read by reporter.)

A. I can't answer that question, because it is not exact enough.

Q. If the Jackson Park was playing a picture,—do you want to come down here with your map?

A. Yes, sir.

(Whereupon the witness left the stand and stood near the map.)

Mr. Seeley: For the record, your Honor, may the objections that were just made, stand to this entire line of

interrogation, so far as it has to do with the drawing

2139 power of different pictures in theatre operations?

The Court: Yes.

Mr. Seeley: Thank you.

Mr. McConnell: Q. Will you point out where the Jackson Park is there?

A. That is the thumb tack I am pointing to at 67th Street and Stony Island.

Q. Right up above there, according to your testimony, is a heavily populated district, that heavily pinked shade indicating a heavily populated district, is that right?

A. That is right. Do you refer up above to the area east of the Jeffery?

Q. No, above, up.

A. That is true. That would be from 67th Street to 63rd Street.

Q. There is a pretty good density out to the left there, isn't there?

A. A wonderful density in there.

Q. Very good?

A. In that area.

Q. How about below there? There is a pretty good density down there, too, isn't there?

A. By "below", you mean—

Q. Below Jackson Park, where you have your pin 2140 for Jackson Park.

A. Do you refer to this? (Indicating.)

Q. Yes.

A. The density,—it is not so dense here for the reason that you take in Oakwood Cemetery. When you average it up, you don't have much density to a quarter of a square mile.

Q. Do you think that because the cemetery is there, people won't come to the theatre?

A. I don't know, but I do know the people in the cemetery won't.

Q. We will grant that. Do you think they are superstitious, that they won't come past the cemetery?

A. No, but they will go to the closer.

Q. All right, let's see. Suppose Jackson Park was playing a picture, which that big pin you have up there is not playing and has not played, do you think people will pass that cemetery and go to the Jackson Park?

A. I don't get your question.

Q. I am referring to the one on the left.

A. That is the Tivoli.

Q. Suppose Jackson Park is playing a picture 2141 which the Tivoli has not played, and is playing ahead of the Tivoli, do you think the people will come past the cemetery to go to the Jackson Park to see that picture?

A. I believe that is too general for me to answer.

Q. All right. You can't answer it. That is all right with me.

Mr. Adcock: I think that is an improper remark. He

said, "All right, you can't answer." He has given his reason.

The Court: If a question is asked you, that you think you cannot answer, Mr. Kuehnle, just say so.

Mr. McConnell: Q. Take the same situation at the north where you have your other big pin.

A. Do you refer to the Tower?

Q. I don't know the name. You put the pin in.

A. That is the Tower Theatre at 63rd and the Illinois Central.

Q. Suppose the Jackson Park is playing a picture that has not been played by the Tower, and is playing ahead of the Tower, do you think the people will pass the
2142 Tower and go to the Jackson Park to see that picture?

A. I cannot answer that question.

Q. All right. Is there any logical reason why a person living across that line, two blocks away from the Jackson Park Theatre, would not go to the Jackson Park Theatre if they wanted to see a picture that is playing ahead of other theatres in the neighborhood?

A. What do you mean by "across that line", Mr. McConnell?

Q. The line you have drawn there on your map with a little string.

A. That is the community area.

Q. Whatever it is. I don't care what it is. I am talking about the line.

A. Some people are going to go to the Jackson Park Theatre; but 63rd Street is your main area and attracts,—it is a so much more important center. It is a magnet that attracts. The Jackson Park Theatre must always eat at the second table to these theatres.

Q. Who says the Jackson Park Theatre must always eat at the second table? Is that your idea?

A. No, it is not the idea—

2143 Q. Is it the idea of the defendants?

Mr. Adcock: Let him answer.

The Court: Let him answer the question.

The Witness: A. That is the idea of a million people who shop on 67th and 71st Streets, and made those the principal shopping streets.

Mr. McConnell: Have you—

The Court: Have you finished your answer?

The Witness: A. Yes.

Mr. McConnell: Q. Have you canvassed the people to see if Jackson Park Theatre must eat at the second table?

A. No, but to determine the character of the stores, the rental paid, indicating the number of people that go there to make 63rd Street one of the outstanding principal streets in the city of Chicago in the total volume of business done.

Q. Can you answer my question? Is there any logical reason why the people who first have a chance to see a picture at the Jackson Park Theatre, would not walk across that line?

Mr. Adcock: Now, your Honor, that question has been put and he answered the question.

The Court: Is that the question he answered?

2144 Mr. Adcock: The same question exactly.

The Court: Then the objection is sustained.

Mr. McConnell: Q. As a matter of fact, the Jackson Park is right in the center of the whole densely populated area that you described, isn't it?

The Witness: A. No.

Q. All right. Point out to the jury the transportation facilities of the Jackson Park.

A. The Jackson Park Theatre has a Stony Island street car and 67th Street street car.

Q. Both ways?

A. Both ways.

Q. How far does the 67th Street car run?

A. The 67th Street street car runs down 67th Street until it goes over here to Vernon Avenue. Then it turns and runs, crosses under, goes down Rhodes Avenue and goes west on 69th Street.

Q. How far east?

A. How far east?

Q. Yes.

A. Half a mile to the end of the line.

Q. Beyond Stony Island?

A. Half a mile to Stony Island Avenue, to the end of the line.

Q. So that the street car line can bring patrons
2145 to that theatre from the district starting here and over here (indicating), is that right?

Mr. Adcock: I object to the question, if the Court please. The record does not show what "here" means.

Mr. McConnell: The jury can see it.

Q. Where does the street car line end? What is the name of the street?

A. On 67th Street running east and west, and on Stony Island Avenue running north and south.

Q. On the east, where is the end of the line?

A. South Shore Drive, half a mile east.

Q. Where does it end on the west? Fix the place. If it runs off the map, say so.

A. It runs off the map.

Q. All right. Now, the Stony Island car line, where does that end?

A. The Stony Island Avenue street car line goes to,—stops at 95th Street, which is about here (indicating).

Q. Where does it come from, from the top of the map? Does it run off the map?

A. It runs off the map and turns down here to 56th Street and goes west one block, runs down Lake
2146 Park Avenue and runs off the map.

Q. The two car lines join where?

A. 67th Street and Stony Island Avenue.

Q. Right where the Jackson Park Theatre is?

A. That is right.

Q. There is a bus line there, isn't there?

A. Yes.

Q. Greyhound bus?

A. Yes.

Q. Where does it run?

A. It runs down Stony Island Avenue.

Q. Where does it go down Stony Island Avenue?

A. It goes to 63rd Street.

Q. Does it start at 63rd Street?

A. Yes. The Greyhound and some other busses there,—the Greyhound, I believe, goes all the way downtown after it stops there.

Q. Down into the city? —

A. Into the city, that is right.

Q. Where is the Elevated toward Jackson Park? Will you point that out?

A. The Elevated is at 63rd Street, half a mile to the south.

The Court: To the north, is it not?

A. Half a mile to the north. Sorry.

2147 Mr. McConnell: Q. Is that the nearest Elevated station?

A. The nearest Elevated station.
Q. All right. Where is the I. C.?
A. The I. C. is a quarter of a mile to the west.
Q. Well, how many blocks?
A. There are eight long blocks to a mile. That would make it two long blocks. In other words, this is the Illinois Central right here at 67th Street.
Q. Well, it is two blocks, is that right?
A. Two long blocks. A block may be short or long. I would say two 600 feet blocks.
Q. Let's say two blocks, is that right?
A. That is the local station of the Illinois Central at that point. It is not an express stop.
Q. There is a motor coach junction there at 67th Street and Stony Island, isn't there?
A. The Chicago Motor Coach Line?
Q. That is right.
A. I don't believe it is at 67th and Stony Island.
2148 Q. Well, you don't know, is that it?
A. Not to my knowledge.
Q. You testified about back here around 1916-1917. How old a man are you, Mr. Kuehnle?
A. Forty-two.
Q. That would make you about eighteen years old at that time, or seventeen years old?
A. That is right.
Q. You are testifying from your recollection, are you, or from what?
A. I am testifying from my recollection.
Q. Of 1916 and 1917?
A. Yes, sir.
Q. At that time when the Jackson Park Theatre was built, do you remember the building of the theatre?
A. No, I don't remember the building of the theatre. I remember that old picnic grove in the corner, though.
Q. What was the picnic grove? Let's hear about that picnic grove.
A. It was an old picnic grove. I don't even remember the name of it. I was a boy and used to go out the next
2149 street and collect rent from a little two-flat that my father owned. I would come out once a month and would go out on the street car and walk over. It was located at 70th Street and East End.

Q. I take it from that, you acquired your yen for the real estate business in boyhood, is that right?

A. That is right. I got started early.

Q. Let's see how much you remember from your boyhood.

Mr. O'Brien: If you don't need him to stand at the chart, let him go back to the stand.

Mr. McConnell: No, I think I want him back here.

Q. Where is this big ballroom, the Trianon?

The Witness: A. The Trianon is located on the southeast corner of 62nd Street and Cottage Grove.

Q. Did they have ballrooms in your day when you were a boy?

A. Oh, yes.

Q. Do you ever remember going from a ballroom to a movie?

A. No, I never did. I spent the evening dancing.

Q. Naturally. You have testified here as to per-
2150 centage of vacancies in the different districts, is that right?

A. That is right.

Q. What kind of vacancies are these?

A. Store vacancies.

Q. You are in the real estate business at the present time?

A. No, I am in the appraisal business.

Q. How long is it since you have been in the real estate business?

A. Well, real estate business is a trade term. I am now a member of the Chicago Real Estate Board. Real estate appraisel business is a branch of real estate business. I specialize in appraisals. That is all my organization does.

Q. You don't sell property?

A. No.

Q. In your appraisal business, you come in contact with some of the reasons for store vacancies at the present time, do you not?

A. That is right.

Q. The war situation has had a tremendous influence upon store vacancies, hasn't it?

A. Yes.

2151 Q. The inability of a merchant to get the goods and stock goods, has a bearing on his ability to pay his rent, is that correct?

A. That is true anywhere in the area in which you are located. In other words, the poor areas are apt to feel it the most effectively. As the area gets progressively better, you have progressively less of that.

Q. The little fellow quits quicker than the big fellow, is that it?

A. There is something to that.

Q. The reason they quit, whether soon or late, is because of their inability to restock their goods, is that right?

A. Yes, and the factor of getting additional help.

Q. But that situation is a war situation, is it not?

A. The war has an effect upon the vacancy situation.

Q. Were you the one who testified about the sewers, or was that your coworker?

Mr. Adcock: That was Mr. Salkin that testified to
2152 that.

Mr. McConnell: Maybe you know something about it. What does sewerage have to do with it? Mr. Quigley said that—

Mr. Seeley: I object to that, your Honor. He did not say any such thing.

Mr. Adcock: The only person I remember testifying to it is Mr. Salkin.

The Court: This man did not, so let's skip the sewer.

Mr. McConnell: Now, you testified as to rents. Did you interview the auditor of the Jackson Park property as to their rents?

A. No, I did not.

Q. Did you look at their leases?

A. No, I did not.

Q. Did you interview the owners down the street as to their leases?

A. Yes, I did,—their agents.

Q. Not the agents. I said the owners.

A. I did not interview the owner,—yes, I did interview some of the owners.

Q. What owners did you interview? What are their names and where are they?

2153 A. Pete Miller, at the corner of 67th Street and Stony Island. If you are referring to 67th Street and Stony Island?

Q. That is a good place to start.

A. Let's see, I believe that is the only owner there that I obtained information from.

Q. All right. Let's go to some other district. 63rd Street, whom did you interview there, what owner?

A. Maryland Building Corporation.

Q. That is one of the defendants in this case?

Mr. Goldberg: I object to that, if your Honor please. Mr. McConnell knows that the Maryland Building Corporation is not a defendant in this case.

Mr. McConnell: Let him say what owner, then.

A. The University of Chicago has a great many stores there.

Q. Whom did you interview?

A. Mr. Lyndon Loesch, the head of the Real Estate Department.

Q. Who else?

A. Hamilton Brothers on 71st Street. You wanted—

Q. 63rd Street now. Let's not go any farther than
2154 63rd Street, for the moment.

A. That is all. I believe they are the only owners I personally interviewed.

Q. Let's go over on 71st Street.

A. Hamilton Brothers.

Q. Where are they located?

A. They are located on 71st Street, about two blocks east of Jeffery.

Mr. Adcock: I think the witness ought to be permitted to sit down.

The Court: Have you finished with the man, Mr. McConnell?

Mr. McConnell: Yes. He can sit down. I did not intend keeping him on his feet.

The Witness: That is all right. I can stand.

(Whereupon the witness resumes the stand.)

Mr. McConnell: Q. Is that all on 71st Street?

A. That is all I can recollect.

Q. Does that cover all the districts now?

A. Well, I interviewed Marshall Field's office on the corner of 75th Street and—the Marshall Field Estate, they have property at 75th Street and Cottage Grove.

Q. Who did you talk to there?

2155 A. Mr. Carroll and the auditor.

Q. What do Hamilton Brothers do on 71st Street? What is their business?

A. Principally they have a little real estate office on the second floor of one of their buildings. They own quite

a bit of property. Incidentally, they own property at 67th Street in the Stony Island area, too, from which I obtained information.

Q. Who else did you talk to?

A. I talked to agents, managers of numerous properties, and examined their rent records.

Q. I am asking now about the owners. Let's exhaust the owners before we go to the agents.

A. That is about all I can remember of the owners.

Mr. McConnell: That is all.

Mr. Goldberg: Just a few more questions, if your Honor please.

The Court: Very well.

Redirect Examination by Mr. Goldberg.

Q. Mr. Kuehnle, you have now named the owners
2156 to whom you talked in each district with respect to obtaining information about rents. Do you recall any of the agents that you talked to, with reference to the rents of properties on 67th Street, in the 67th and Stony Island district?

A. Yes, I do.

Q. Can you give us any of the names? Do you remember the names of the agents with whom you talked?

A. Peter Tuteles and Hanlon & Sexauer. There may be some others.

Q. In connection with your survey with respect to rents, did you prepare any memoranda that would indicate the names of the people with whom you talked?

A. Yes.

Q. Have you that memoranda with you?

A. Yes.

Q. Would that help to refresh your recollection as to the agents with whom you talked on that subject?

A. Yes.

Q. Will you please refer to that record and see if that refreshes your recollection as to other agents with
2157 whom you talked with respect to rents in the Stony Island area?

Mr. McConnell: I object to that. He has not exhausted his recollection.

The Court: I thought he said that is all he remembers.

What is the difference between that and exhausting his memory?

The Witness: A. Warren & Kahn, 110 South Dearborn Street. I gave Peter Tuteles and Hanlon & Sexauer. I also obtained a few rentals from tenants, in some cases confirmation of the opinion.

Mr. Goldberg: Q. I see Mr. Kuehnle, do you have with you the book from which you took the boundaries of the community areas as they appear on the map to which you have referred?

A. Here is one from Mr. Kahn of the Securities Service Corporation. In answer to your question, yes, I do have the book.

Mr. Goldberg: Your Honor, perhaps we can shorten this. Mr. McConnell made reference to this book which is not offered in evidence. I did offer one volume, but he objected to it and the objection was sustained.

I should like to make an offer of volume 1 of the
2158 same set of books, to show the sources of the boundary areas as they appear on the map.

The Court: Do you make some objection?

Mr. McConnell: My objection was as to cluttering up the record.

The Court: Do you object to it?

Mr. McConnell: Yes.

The Court: The objection is sustained. Is there any other question as to this witness?

Mr. Goldberg: Not on my part, your Honor.

Mr. O'Brien: I have.

The Court: All right.

Examination by Mr. O'Brien.

Q. In your opinion, Mr. Kuehnle, is the war the chief cause of the Stony Island area vacancies, to which you testified?

A. No, not the chief cause.

Q. What is the chief cause, in your opinion, briefly?

A. The fact that it is trying to serve the same people that are served by two principal shopping centers. 63rd Street serves the community area of Woodlawn, and
2159 71st Street serves the community area of South Shore. 67th Street and Stony Island was formerly the community area. It is a declining area and—

Q. I just want—

A. Do you want me to elaborate on it?

Mr. O'Brien: That satisfies my question.

Q. The time of which you speak, when you attended ballrooms, did they have any ballrooms such as the Trianon?

A. No.

Q. They were dance academies, were they not?

A. Dance academies, yes.

Mr. O'Brien: That is all.

The Court: I am glad we have that settled. Any further question?

Mr. McConnell: I have none.

The Court: Anybody else? That is all, Mr. Kuehnle.

(Witness excused.)

Mr. Goldberg: I wish to have the record show that the book which has been marked Balaban & Katz-Paramount Exhibit 9 for identification, is the book which was offered in evidence, and to which offer an objection was made, 2160 and the objection was sustained by the Court.

The Court: Very well. We will suspend until 2:00 o'clock.

(Whereupon an adjournment was taken in the above entitled case to 2:00 o'clock p. m. of the same day, Wednesday, March 1, 1944.)

2161 IN THE DISTRICT COURT OF THE UNITED STATES.

• • (Caption) • •

Before Igoe, J., and J.
Wednesday, March 1, 1944,
2:00 o'clock P. M.

Court met pursuant to noon recess.

Present:

Mr. McConnell,
Mr. Korfist,
Mr. Adcock,
Mr. Goldberg,
Mr. Seeley,
Mr. O'Brien.

The Court: All right, gentlemen.

Mr. Goldberg: I will ask Mr. Fuhrer to take the stand, please.

2162 MAX FUHRER, a witness called on behalf of the defendants Paramount Pictures, Inc., and Balaban & Katz Corporation, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Goldberg.

Q. Will you state your name, please?
A. Max Fuhrer.
Q. And where do you live, Mr. Fuhrer?
A. 5038 Drexel Boulevard.
Q. And what is your business or occupation?
A. Mechanical and structural engineer, and appraiser.
Q. What education have you had, sir?
A. Regular public school, high school, and a graduate of Armour Institute of Technology.
Q. What is the nature of your work?
A. We do mechanical investigation, structural investigation work, and valuation work, in connection with real estate.

Q. For how long have you been engaged in that business?

A. About twenty years.

Q. What did you do prior to that, sir?

A. Went to school.

2163 Q. How long did you say you have been engaged in your present line of work?

A. Twenty years.

Q. Prior to that you went to school?

A. That is right.

Q. For how long?

A. Well, all schooling combined, sixteen years.

Q. Have you made any investigation, Mr. Fuhrer, of certain theatres on the south side, from a physical point of view, including their appointments and equipment?

A. I did.

Q. What theatres have you so investigated?

A. The Tivoli, Avalon, Tower, Jeffery, Shore, Grove, Hamilton, Jackson Park.

Q. What was the nature of your investigation with respect to the physical condition and equipment and appointments of those theatres?

A. I personally went through all the structures.

Mr. O'Brien: Speak a little louder, will you, Mr. Fuhrer?

A. I personally went through all the structures, and made notes of all the physical factors, and then completed it with computations, made final summaries.

Mr. Goldberg: Q. And based on your experience,
2164 Mr. Fuhrer, and the investigations which you have made, do you have an opinion as to whether the Jackson Park Theatre is superior or inferior to the Tivoli Theatre, from a physical point of view, and with respect to its appointments and equipment?

A. I have.

Q. What is that opinion, sir?

A. The Tivoli is superior to the Jackson Park.

Q. In arriving at that conclusion, what factors did you take into consideration?

A. I took many factors in, and some of the main factors are the total seats, the number of seats on the main floor, the age of the theatre, the volume of the house per seat, the area of the house per seat, the area of the public circulating section outside of the auditorium to seat, the fact

whether the theatre had a stage or no stage, the organ equipment, the type of floors, walls and ceilings, the exterior elevations, the canopy, the type of seat, type of cooling equipment, that is, as to the circulating, method of circulating, and also as to the actual cooling units, and many other factors.

Q. Based on your experience and on your investigation, do you have an opinion as to whether the Tower
2165 Theatre is superior or inferior to the Jackson Park?

A. I have.

Q. From a physical point of view, including its appointments and equipment?

A. I have.

Q. What is that opinion?

A. That the Jackson Park is inferior.

Q. The Jackson Park is what?

A. Inferior.

Q. And do you base your conclusion on a study of the same factors which you have already recited—

A. Yes, I have, sir.

Q. (Continuing.) —with respect to the Tivoli and Jackson Park?

A. Yes.

Q. Based on your investigation and studies, do you have an opinion as to whether the Maryland Theatre, from the same point of view, is superior or inferior to the Jackson Park?

A. I have.

Q. And what is that opinion?

A. The Maryland is superior.

Q. In arriving at that conclusion did you base your opinion on the same factors which you have already described?

2166 A. I did.

Q. Do you have a similar opinion with respect to the superiority or inferiority of the Avalon Theatre?

A. I have.

Q. With respect to the Jackson Park Theatre?

A. I have.

Q. What is that opinion?

A. The Avalon is superior.

Q. Do you have an opinion, sir, based on your experience and on your investigation, with respect to the comparison of the Grove Theatre and the Jackson Park Theatre,

with respect to its physical condition, appointments and equipment?

A. Yes.

Q. And what is your opinion?

A. The Grove is superior.

Q. Do you have an opinion, based on the same factors, with respect to the comparison between the Shore Theatre—

A. Yes.

Q. (Continuing.) —and the Jackson Park Theatre?

A. Yes.

Q. What is that opinion?

A. The Shore Theatre is superior.

Q. Do you have an opinion, based on the same
2167 factors, with respect to the comparison between the Jeffery Theatre and the Jackson Park Theatre?

A. Yes.

Q. What is that opinion?

A. The Jeffery is superior.

Q. Now, Mr. Fuhrer, with respect to the Jeffery Theatre and the Jackson Park Theatre, would you state what your findings were with respect to each of those theatres, on each of the factors which you have referred to? Can you do that from memory, sir?

A. Well, the exact seating, and so on, I could not give, but roughly I can give it.

As to the number of seats, the Jeffery has more than the Jackson Park. As to the number of seats on the main floor, the Jeffery has more than the Jackson Park. The Jeffery is a house with a balcony and main floor, and the Jackson Park is main floor only. As to the volume per seat, the Jeffery has more than the Jackson Park. As to the area of the theatre foyers, entry, toilets, and so forth, other than the auditorium, the Jeffery has more area per seat than the Jackson Park.

The Jeffery has a full stage, whereas the Jackson Park has none. The seats in the Jeffery theatre are metal
2168 back, with a cushion having a spring edge, and the back is metal, with upholstering, if I recall, probably padded to one and a half to two inches. The Jackson Park has what is called a box spring seat, having a wooden, you might call it, section underneath, or plywood, rather, holding a wood enclosing strip, and the springs are set inside of that, and the seats are relatively harder, by actual ex-

perience, than that in the Jeffery Theatre. The backs are plywood, and they have inserted a leatherette section, with very little padding in it.

The toilet facilities in the Jeffery, appointments and numbers are larger and superior to that of the Jackson Park.

The entry foyers are more spacious. The canopy in front of the Jeffery Theatre is well designed, and has attraction boards in it, has better workmanship in it, that is, as far as attraction goes, than the Jackson Park. The Jackson Park canopy has, you might say, plain surfaces on the outside for the most part, and in the daytime the general appearance, as well as at night, of the Jeffery canopy is better than that at the Jackson Park.

The exterior of the building itself above and at
2169 the sides of the theatre entrance is, that is, as far as the Jeffery is concerned, is far more, you might say, aesthetically or architecturally superior to that of the Jackson Park.

The carpeting itself at the Jeffery is, I believe, of better design and better padding by feel than that of the Jackson Park.

The general appearance of the auditorium at the Jeffery Theatre, of both walls and ceiling, have a relatively better design, and the design itself has qualities that indicate newness, a far more, you might say, modern effect than that at the Jackson Park.

The screen itself at the Jackson Park, with the curtains at the sides, is not in keeping with the house as a whole. That is an opinion of mine.

The pictures, as I personally viewed, I believe are more distinct, and give a slightly better reaction at the Jeffery than at the Jackson Park.

The refrigeration medium at the Jeffery is a modern system of compressor which cools the air by the expansion of the refrigerant within the air stream of the circulating system, and at the Jeffery they have no com-
2170 pressor equipment.

Q. At the Jeffery?

A. At the Jackson Park, pardon me.

The Jeffery, as I recall, has a mushroom exhaust system, and the Jackson Park I could not find any, and they did not have that.

I, of course, could not get the exact relative merits of

the two cooling systems because I viewed them during the last two weeks.

There are other factors than that, going into it in finer detail.

Q. Will you compare the physical characteristics of the Maryland Theatre with the Jackson Park Theatre in the same fashion?

A. The Maryland Theatre, as I recall, has more seats than the Jackson Park. The entry has a dome in the center, and the walls of the entry are marble, in good taste, and the exterior foyers, that is, foyers, entry or lobbies, and toilet rooms have a larger area per seat than that at the Jackson Park.

The auditorium is not the usual rectangular, it is octagonal in shape; and well designed for good seating. The auditorium, walls and ceilings are fairly well designed, I believe, in my opinion, superior to that of the Jack-
2171 son Park.

The carpeting is better.

The seats are metal back and metal cushion, that is, the base of the cushion, and they are spring edged. In other words, in the case of the Maryland, there is no wooden exterior holding in the springs. The widths of the seats themselves are slightly larger than the Jackson Park.

The exterior canopy for the type of location is very well designed. As to the Jackson Park, it is far superior.

The cooling medium, again, is a compressor system, and it cools the air by means of a washer within the air stream.

The exterior of the building, to the right and left of the entry to the theatre, is superior in material and general design, to the Jackson Park.

And there are other factors. I think those are probably the main ones.

Mr. Goldberg: I think that is all of my direct.

Mr. O'Brien: Have you finished?

Mr. Goldberg: Yes.

2172 *Cross-Examination by Mr. O'Brien.*

Q. Mr. Fuhrer, you, too, were hired by the defendants to make this investigation, and to give your report, were you not?

A. I didn't quite get the question. I did not hear it exactly right.

Mr. O'Brien: Read the question.

(Question read.)

A. Yes.

Mr. O'Brien: Q. Have you done any other work at any time for any of the defendants?

A. Yes.

Q. For whom?

A. For B. & K., Warners, many other theatre people in town. I don't know if they are all defendant.

Q. Could you name us some other theatre people?

A. Beg pardon?

Q. Can you name us some other theatre people?

A. Well, we investigated places like the LaMarr Theatre, the Pantheon, the Sheridan, the Devon, the Goethe, Piccadilly.

Q. The Piccadilly is a Schoenstadt theatre?

A. Yes. We investigated all their—

2173 Q. Just briefly what was the purpose of the investigations or check ups which you made in other cases for the folks you have mentioned?

A. Various purposes, such as structural recommendations, valuation, determination of value for inheritance tax, real estate taxes, and other litigation.

Mr. O'Brien: That is all.

Mr. McConnell: Are you all through?

Mr. O'Brien: I am all through, yes.

2174 *Cross-Examination by Mr. McConnell.*

Q. What other litigation, Mr. Fuhrer?

A. Insurance matters, fire insurance matters.

Mr. O'Brien: What was the question? I didn't understand the question.

The Witness: What other litigation?

Mr. McConnell: What other litigation, I asked him.

Q. You said other litigation. I want to know what other litigation.

A. Fire insurance, or determination of loss, the determination of rentals, in the case of the McVickers Theatre.

Q. Have you had any other litigation of this character?

A. No.

Q. Any arbitration proceedings? Have you testified in any of those?

A. No, sir.

Q. What kind of an engineer would you say you were?
A. Graduate mechanical engineer, registered structural engineer, in Illinois and Ohio.
Q. Just what is a structural engineer, what does that include?
A. It includes the design, construction, investiga-
2175 tion of all structural features of improvements, whether they are buildings, bridges, roads, and so on.
Q. Aside from this investigation that you have made for these particular theatres that Mr. O'Brien asked you about, have you ever built any theatres?
A. We built the Sonotone in Chicago, and made preliminary plans in others.
Mr. Adcock: I could not hear.
Mr. O'Brien: You will have to keep your voice up, Mr. Fuhrer.
The Witness: I made preliminary plans in others. I will try to talk louder. Pardon me.
Mr. McConnell: Q. The Sonotone, where is that?
A. That is the old Central Music Hall on Van Buren street between Wabash and Michigan.
Q. And when was that built?
A. 1930.
Q. How large a theatre is that?
A. Three hundred and—oh, I believe 360 seats, now.
Q. Did you build it or rebuild it?
A. We rebuilt it.
Q. And when you say "we", who does that include?
A. Includes the firm of Eugene and Max Fuhrer.
Q. Eugene and Max Fuhrer?
2176 A. Yes, sir.
Q. Is that your brother?
A. Eugene is my brother, and Max is myself.
Q. Do you make appraisals?
A. We do.
Q. When you speak of things having a pleasing look, you are referring simply to your own personal reaction, are you not?
A. Necessarily so.
Q. What kind of a canopy does the Jackson Park Theatre have; just describe it in more detail, if you will?
A. The front and sides of the canopy proper are approximately four feet high, four to five feet high; it varies in height. It is made up of a strip of sheet metal, without

any boxes for lights, that is, with lamp sockets and electric globes, which are spread about the surface, and without any real design to the actual location of the bulbs.

The sheet of metal itself is painted. The soffit of the canopy, that is, the ceiling, if you are standing underneath, also has no paneling effect, and has lights that are inserted in it, you might say generally, not too many of them, underneath. The portion of the soffit, as it comes to the theatre, is curved down to the top of the entrance
2177 doors, and that is about all.

Q. When did you make all this examination?

A. During the last two weeks.

Q. Where did you observe it from, the street?

A. Underneath, sides, inside the theatres. You mean the canopy part?

Q. Yes, I mean the canopy?

A. Street, sidewalk, underneath.

Q. Did you observe it from across the street?

A. I did.

Q. When you say it is not pleasing, that is just your own reaction to it, is it not?

A. Well, it is my reaction as a man within the field.

Q. Are you in the canopy field?

A. No. I am in the field of analysis, and I have an opinion on it that some people may—may be superior to some one else's opinion.

Q. Well, it is just an opinion?

A. Oh, certainly.

Q. How much are you being paid?

A. I don't know, yet.

Q. Where did you get your figures for the interior of the Jackson Park Theatre?

A. What figures?

2178 Q. Well, you testified about the volume per seat.

A. I made my own computations of it, of them.

Q. Well, from what data?

A. Well, from the fire maps, in the case of the Jackson Park. In other words, we could not measure it.

Q. You did not go in and measure it yourself?

A. We measured the fire maps, which are accurate.

Mr. McConnell: I ask that that go out as not responsive. I asked him if—

The Court: It may go out.

Mr. McConnell: Read the question to the witness, will you please?

(Question read.)

A. I measured the fire map dimensions, but not the actual building in the field.

Q. Did you go in the Theatre at all?

A. I did.

Q. Who with?

A. My wife.

Q. Did you go in with Mr. Immerman.

A. No, sir.

Q. Did you measure the screen in the Jackson Park?

A. I got the size of the screen from the testimony of Mr. Salkin.

Mr. McConnell: I ask that that go out as not re-
2179 sponsive. I asked him if he measured the screen.

A. No, I did not.

The Court: The question is. Did you measure the size of the screen?

A. No.

The Court: The answer is "No".

Mr. McConnell: Q. What time of day did you go in the Theatre?

A. In the evening.

Q. How long did you stay?

A. Full performance.

Q. Full performance?

A. Yes, sir.

Q. What time did you come in, and what time did you leave?

A. Well, I believe we came in about a quarter to ten and left at twelve.

Q. Did you go up into the projection room?

A. No, sir.

Q. What toilet rooms did you go into?

A. I went in the men's toilet rooms.

Q. Did you go into the usher's robing rooms, or anything of that kind?

A. No, sir.

Q. You said that there was no stage at the Jackson Park. As a matter of fact, there is a stage there,
2180 isn't there?

A. Would you want an informative answer to that? When I mean stage,—

C

Q. Well, is there, or isn't there a stage?
A. There is no stage, in my opinion.
Q. Is there an organ there?
A. Yes, sir. I believe I saw the indications of an organ.
Q. Well, you saw the pipes of the organ, didn't you, on the side of—
A. Yes, sir, I did.
Q. On the side of the screen?
A. That is what I did see.
Q. Did you count the seats?
A. Yes, sir.
Q. Made an actual physical count of the seats?
A. Yes, sir.
Q. Did you count the seats at the Jeffery?
A. Yes, sir.
Q. How many seats did you find on the down floor of the Jeffery?
A. May I look at my notes?
Q. Yes, you may look at your notes.
A. 1478.
Q. When did you go to the Jeffery?
A. In the afternoon.
Q. Was the balcony opened at the Jeffery when 2181 you went there?
A. No, sir; that is, it had a cord, if you—it had a cord across. We went up there. It was not open to the public.
Q. Now, when you say that the seats were softer in one theatre than in the other, is that your opinion from just sitting in the seat?
A. From sitting in the seat, yes, sir.
Q. Is that an engineer's opinion or is it just an individual's opinion, sitting in the seat?
A. It was my opinion.
Q. You didn't need any engineering training to draw a conclusion about that opinion?
A. Well, I further know the construction of theatre seats, and it did help me to give a more qualified opinion on it.
Q. I am talking now about the feel of the seats to you?
A. Well, the knowledge you have of the construction has something to do about your final opinion and feeling about it.

Q. About how you feel about it?
A. Yes, sir.
Q. A person without your specialized knowledge might have a different feeling in one seat than in the other,
2182 is that it?
A. Well, he may not have the same perception as I have.
Mr. Adcock: I object to the form of the question.
Mr. O'Brien: He knew the construction of the seats.
The Court: All right. I will sustain the objection as to the inquiry about the feel of the seats.
Mr. McConnell: Q. How many times have you testified as a witness?
A. What type of work?
Q. Well, as a witness in any kind of a case?
A. Many times.
Q. Well, how many?
A. Well, I believe, over the last ten years, probably about six thousand.
Q. About six thousand times a witness?
A. Yes, sir.
Q. How many times have you testified as a witness for these defendants?
A. Well, that is an approximation, but probably fifty or sixty times. I mean of separate projects, you might say, probably that many.
Q. Do you wear glasses?
A. No, sir.
Mr. McConnell: I think that is all.

2183 *Redirect Examination by Mr. Goldberg.*

Q. When you say you testified for the defendants in this case, fifty or sixty times, what was the nature of the litigation in connection with which you testified?
A. Well, I testified for the McVickers Theatre on valuation, to determine the valuation for rental purposes; testified on the theatre in Hammond, where an explosion destroyed the house. I testified in cases of tax matters on most of the theatres, at various times.
Q. How did you determine the size of the screen in the Jackson Park Theatre?
A. From the testimony of Mr. Salkin.

Q. You read that testimony?
A. I did.
Mr. Goldberg: I thing that is all.
The Court: Anything further?
Mr. McConnell: No, your Honor.
The Court: That is all, Mr. Fuhrer.
Mr. O'Brien: I have a question.
The Court: Oh!

2184 *Recross Examination by Mr. O'Brien.*

Q. Was there some explanation that you started to make about the stage or lack of it at the Jackson Park?
A. Yes.
Q. What was it that you wanted to say?
A. Well,—when I say—
Mr. O'Brien: I can not hear you, Mr. Fuhrer.
A. When I was talking about a stage I meant one on which vaudeville or legitimate theatre performances could be played, with a steel curtain, and dressing rooms, and other facilities for actual living actors presenting a performance, and not a platform which is usual in most theatres that have just a screen. I do not call that a stage.
Q. And precisely what did you find there at the Jackson Park?
A. At the Jackson Park there is no stage, as I understand it. At the Jeffery there is.
Q. Well, I am asking you, what did you find at the Jackson Park?
A. A platform.
Q. And nothing more?
A. That is right.
Q. Now, how many times have you testified for
2185 Warner Bros., for any purpose?
A. Well, I am trying to visualize how many theatres I went on for them; probably about twenty or thirty.
Q. And was that in relation to real estate tax matters?
A. Yes, sir.
Q. And nothing more than that?
A. That is right.
Q. And for the purpose of determining the valuation for tax purposes, you checked some of the Warner Theatres?

A. Yes.
Q. Well, where did you testify?
A. Before the Assessors and Board of Appeals, in the City of Chicago, County of Cook.
Mr. O'Brien: That is all.

2186 *Recross Examination by Mr. McConnell.*

Q. Was there a transcript of your testimony there?
A. In some cases, yes.
Q. Have you a copy of it?
A. Now, that is a very general question. Testimony in what particular matter?
Q. With reference to the tax assessment in Warner Bros. Theatres?
A. I don't believe in that case any transcript—any transcripts were taken.
The Court: Is that all?
Mr. McConnell: That is all.
The Court: All right, Mr. Witness.
(Witness excused.)
The Court: Have you another witness?
Mr. Adcock: We have, your Honor. We expected that Mr. McConnell would be ready to cross-examine Mr. Immerman, and we are trying to get Mr. Goodman. I understand Mr. McConnell is ready to cross-examine Mr. Goodman.
The Court: Oh, he is?
Mr. Adcock: Yes.
The Court: To cross-examine Mr. Goodman?
2187 Mr. Adcock: Yes. I have been trying to reach him, but I understood this morning from some source that he would not be ready to cross-examine Mr. Goodman, so this morning I had not tried to have him here. However, I telephoned Mr. Goodman's office, and expect that he will be here.
The Court: Do you have another witness, if he is not here?
Mr. Adcock: Mr. Immerman is here for crass-examination.
The Court: Do you want to cross-examine Mr. Immerman now, Mr. McConnell?
Mr. McConnell: Well, I didn't want to, but I don't want

to delay this trial, and if that is the only thing we can do, I will go ahead with him.

The Court: You have to do it some time, if you want to get it over with.

Mr. Adcock: The information is that Mr. Goodman is out. I telephoned, and he is expected back. I left word for him to come over here as soon as possible. I would like very much to accommodate Mr. McConnell in that respect, if it ~~can~~ be done. I made every effort.

The Court: It looks like you will have to start to 2188 work on brother Immerman.

Mr. McConnell: All right, Mr. Immerman, take the stand.

You had a couple of more questions to ask him, didn't you, Mr. Adcock?

Mr. Adcock: What is that?

Mr. McConnell: Didn't you have a couple of more questions you were going to ask him?

Mr. Adcock: No. I wanted to read in evidence the Tivoli film rental, if I can. Remember, we didn't finish that?

Mr. McConnell: Yes. Go ahead.

Mr. Adcock: The film rental at the Tivoli Theatre, the total for the feature pictures, for the following years, is as follows:

1936, $112,777.65; 1937, $163,639.67; 1938, $165,452.47; 1939, $159,407.02; 1940, $141,788.91; 1941, $152,139.35; 1942, $168,749.19.

I have a copy here.

The Court: Is that all?

Mr. Goldberg: Is that all?

Mr. Adcock: That is all.

The Court: All right, Mr. McConnell.

2189 WALTER IMMERMAN, having been previously sworn, resumed the stand, was examined further, and testified as follows:

Cross-Examination by Mr. McConnell.

Q. Mr. Immerman, you testified that your film deal with Paramount was an inter-company deal. What did you mean by that?

A. I don't recall saying "inter-company", but I think that would be the proper way to say it.

It is a deal that is made between our Company and the Paramount film company, inasmuch as they are one company, not from a corporate standpoint, but an operation.

Q. What you mean by that was that you were not bargaining across the table with Paramount about anything; it was your Company; you were their company; it was all one, and all one big family together, isn't that what you mean?

A. No, I do not mean that.

Q. All right. What do you mean?

A. Regarding what? The inter-company thing?

Q. The negotiation of films.

A. Oh, in buying film.

Q. With Paramount?

2190 A. In buying film, Paramount film, we negotiate for the pictures, have negotiated through the period that we talked about here, just like any other company, and it is only in the last two years that a different plan of payment was developed.

Clearance is negotiated just like it always was. It is only the payment part that has been changed.

Q. And the payment has been changed to the extent that you are keyed to national production, as I understand it, national exhibition receipts; you are assigned a certain quota under that?

A. You are not right about the relation of the key to the receipts.

Q. All right. Well, you straighten us out on that?

A. You are keyed to the national film rental received by Paramount.

Q. That is what I said.

A. Well, no, receipts and film rental are two different things. I regard receipts as box office receipts.

Q. I am talking about Paramount receipts for film? You are keyed to the national picture of Paramount?

A. That is right, national gross film rental.

Q. And assigned a quota under that?

2191 A. That is right.

Q. And if you exceed the quota, you pay for it?

A. No, you could not exceed the quota.

Q. Well, what happens if you exceed the quota?

A. Well, the key is based on a calculated possible gross film rental. If the gross film rental is reduced or increased, the application of the key will automatically take care of our cost.

Q. Well, it would increase it, wouldn't it?

A. In the event that the gross was higher.

Q. Yes.

A. In the final analysis, yes, and lower—

Q. The adjustment is made on the basis of the final figures?

A. That is right.

Q. So that the Paramount Company has an interest in your business?

A. Definitely.

Q. In all your intake at the box office, in your different theatres, right?

A. Yes.

Q. And I assume that they have a right to, access to your books and records, to find out whether or not you are complying with your contract, is that right?

A. I believe not.

2192 Q. Well, do you have a contract which covers it?

A. Yes, sir.

Mr. McConnell: Let us get the contract out, with Paramount. Not the clearance contracts, but the film contracts. We will pass that subject for the moment. While we are looking for that, I am going back for the moment to the subject I started to interrogate you about before.

Q. Were you present when the pictures were taken of the Jackson Park Theatre?

A. No, sir.

Q. Who took those pictures?

A. I don't know.

Q. Do you know how many pictures were taken?

A. I don't know a thing about it.

Q. You don't know a thing about it?

A. No.

Q. So that when you identified a picture here which was introduced in evidence from that book, you were simply testifying from your general recollection of the Theatre that that was a picture of the Theatre?

A. That is right, and I believe I mentioned the fact that it was marked "Jackson Park".

Q. And aided by the marking of the Jackson
2193 Park, you were able to identify it as such?

A. Yes, sir.

Q. You have given us all you know now about the taking of those pictures?

A. I know nothing about the taking of the pictures.

Q. When were you in the Jackson Park Theatre last?

A. The 20th of February.

Q. During this year?

A. Yes, this last February. I believe it was the 20th. It was my brother-in-law's birthday, the 20th of February.

Q. Who was with you?

A. My wife.

Q. Did some one ask you to go there that night?

A. No, sir.

Q. That was you own idea?

A. Definitely.

Q. On your direct examination you testified that the Balaban boys were the pioneers in theatre construction. Who are the Balaban boys?

A. Barney Balaban, A. J. Balaban, Max Balaban.

Q. Is that all of them?

A. These are the pioneers, I refer to.

Q. Those are the three pioneers?

2194 A. They were, of the Balaban & Katz organization, yes.

Q. Who is Mr. Katz?

A. Sam Katz?

Q. Yes.

A. Sam Katz was a—who is he?

Q. Who was the Katz of Balaban & Katz?

A. He was a partner of the original Central Park Theatre, and was also an officer of the Balaban & Katz Corporation subsequent to the Central Park Theatre.

Q. Well, now, the first organization of the Balaban boys, and Mr. Katz, what was that, the Balaban & Katz—

A. Corporation.

Q. (Continuing.) —Corporation?
A. Yes, sir.
Q. When was that organized?
I couldn't tell you. I don't know.
Q. Long before your time, is that right?
A. Yes, sir.
Q. What was their first theatre, do you know?
A. I belive the Central Park.
Mr. Adcock: He has just stated it.
The Witness: I don't know.
Mr. McConnell: Q. What?
Mr. Adcock: He just stated that.
Mr. McConnell: Well, I am asking him again.
2195 The Witness: I believe it was the Central Park Theatre.
Mr. McConnell: Q. And where is that located?
A. It is on Roosevelt Road, near Kedzie.
Q. How large a theatre is that?
A. It is a little less than 2,000, about 2,000 seats.
Q. Isn't that the Theatre that has the split product deal with Mr. Kirsch?
A. The Theatre has no deal with Mr. Kirsch.
Q. All right. What was the next theatre that Balaban & Katz acquired?
A. I believe it was the Riviera.
Q. Where is that?
A. That is at the corner of Lawrence, right near the corner of Lawrence and Broadway, I believe 4700 north.
Q. Do you know who owned that theatre?
A. Who owns the real estate, property?
Q. Yes.
A. I don't recall the name. I know. I don't recall the name.
Mr. McConnell: Let us have that chart.
Q. Where did you say the Riviera was located?
A. 47th and Broadway, south of the corner. It is really on another street. There are three streets coming together. I don't know the names of the other
2196 streets. I always call it Broadway.
Q. And that is a leasehold, is it not?
A. Yes, sir.
Q. And you don't know who he acquired it from?
A. No, I do not.
Q. You do not know the date?

A. I don't recall the date.
Q. What was the next theatre that was acquired?
A. Well, this is an I. Q. test I think the Tivoli was the next. I don't remember.
Mr. McConnell: I ask that the remark "is an I. Q. test" go out.
The Witness: I am sorry I made it.
The Court: It may go out.
Mr. Adcock: Your Honor, we all know, counsel knows, there is a chart here, that was offered in evidence by them, which gives a list of the theatres.
Mr. McConnell: I want to know what this witness knows.
Mr. Adcock: It is only fair to the witness that he have the chart on his cross-examination.
Mr. McConnell: You give him the chart. He can have it if he wants it. He has not asked for it yet.
The Witness: That is why I made the remark.
Mr. McConnell: Q. Do you want the chart?
2197 A. I must have something to refer to. My memory is not sufficient for the answers.
Q. What was the next theatre that was acquired?
A. The Chicago Theatre.
Q. That was 1921?
A. Our record shows October 26th, 1921.
Q. That was built, was it not, by Balaban & Katz?
A. Yes, sir.
Q. What was the next one that was acquired?
Mr. Adcock: If your Honor please, I do not see the object of the cross-examination, or its relevancy at all, in going over something, have the witness read off something that appears in the chart. It was introduced by the plaintiffs. The chart was prepared by us, furnished to them at their request, and all those facts are shown on this chart.
Mr. McConnell: You went into that at great length, apparently, when I was absent, of building up this empire. I am going to show how it was done.
Mr. Seeley: I object.
Mr. Adcock: That is improper.
Mr. Seeley: I object to the remark, and move that it be stricken.
The Court: Let us strike that remark, let us get
2198 along with this examination.
The Witness: The record shows July 22nd, the Roosevelt Theatre.

Mr. McConnell: Q. Now, how many of the theatres of the Balaban & Katz chain were built by Balaban & Katz?

A. Central Park, the Chicago, the Cine, the Coronet, Gateway, Nortown, Paradise, Southtown, Tivoli, Uptown, Will Rogers.

Q. That is all they built out of the total chain?

A. That is right.

Q. Wasn't the Paradise built by the Marx Brothers?

A. No, sir.

Q. Balaban & Katz built it when?

A. The Paradise Theatre was acquired September 17th, 1928, according to the record.

Q. The Granada and the Marbro were acquired by purchase, were they not?

A. Acquired by lease. The Marbro, December 6th, 1929; it was subsequently purchased.

Q. When was it purchased?

A. The Granada, it doesn't say here, and I don't know. The Granada, the same story.

Q. Do you know who they were purchased from?

A. No, I don't know.

Q. You do not know?

2199 A. I wasn't in Chicago when that happened.

Q. So you don't know?

A. I don't know.

Q. You have no information from which you would know that?

A. I have no information, no.

Q. Have you ever heard they were purchased from the Marx Brothers?

Mr. Adcock: I object to that.

The Court: What is the objection?

Mr. Adcock: Why, he stated he does not know. What difference does it make what he heard?

The Court: He is connected with this business. He might have heard something. The objection is overruled.

A. I don't know that they were purchased from the Marx Brothers. I—

Mr. McConnell: I didn't ask you that. Read the question to the witness, please?

(Question read.)

A. No, I never heard they were.

Mr. McConnell: Q. Never heard that?

A. I do know that Marx Brothers owned them at one time, but I don't know whether they—

Q. How do you know that?

2200 A. How do I know that?

Q. Yes, how do you know that?

A. Because they operated them, built them.

Q. They were the last ones that operated them and built them, weren't they, before your Company acquired them?

A. Well, that might be right.

Q. Well, it is right, isn't it?

A. Well, I don't know it to be a fact, Mr. McConnell.

Q. You don't know that, but you know that they did operate them before you got them?

A. That is right.

Q. And you are operating them now?

A. That is right.

Q. And you don't know of anybody that operated them between the time they operated them and the time you operated them, do you?

A. Not individuals, no.

Mr. McConnell: All right.

The Witness: I am trying to answer you, whether you are talking about a corporate or an individual, or—I wasn't in town during that period, and I don't know. I can look it up for you.

2201 Q. You could what?

A. I could look it up, look the record up and see.

Q. Do you have to look that up?

A. I would have to. I was away at the time it happened.

Q. They are the two largest theatres you have, aren't they—

A. No.

Q. (Continuing.) —outside the Loop?

Mr. Adcock: I don't see why counsel should indulge in argument with the witness.

Mr. McConnell: I think I should have some leeway with this witness. He claims to know all about this business.

The Court: You are getting along all right, aren't you?

Mr. McConnell: Yes.

The Court: Well, what is all the kicking about?

Mr. McConnell: Read the question to the witness.

(Question read.)

A. Yes, they are.

Q. And you don't know how you got them? Is that your position?

A. I don't know how Balaban & Katz acquired them.

2202 Q. What did you say your position with Balaban & Katz is?

A. General Manager.

Q. And you are in charge of all their affairs, and all their operations, is that right?

A. Since 1930, '31, yes, sir; not prior to that, however.

Q. Is anybody over you at all?

A. Yes, sir.

Q. Who?

A. John Balaban.

Q. Does he have supervision over all your work?

A. Yes, sir.

Q. What is his position with the Company?

A. Secretary and Treasurer of the Company.

Q. Who is the President of the Company?

A. Barney Balaban.

Q. Do you have the records of the Marbro and Granada Theatres in your possession?

A. I do not have any records.

Q. Who has them?

A. I wouldn't know.

Q. Well, let us get your duties again. What do you do?

A. You mean at the present time?

Q. Yes.

A. Or are you referring to—

Mr. Adcock: I am going to object to the attitude of counsel in this cross-examination.

2203 The Witness: I do not understand your question, Mr. McConnell.

Mr. Adcock: As being unfair to the witness, an appearance of anger, and throwing papers down as he examines the witness, over nothing, as far as I can see.

Mr. McConnell: Well, I am sorry if my attitude is not pleasing to counsel. The witness can obviously take care of himself, without the aid of counsel.

The Witness: I have not regarded it so, Mr. McConnell, so forget it.

Mr. McConnell: What is that?

The Witness: I have not regarded you as being angry.

Mr. McConnell: Well, I am not angry. You can tell it, can't you?

The Witness: Yes. It is O. K.

Mr. McConnell: Q. I do want to find out what your position is, and what your duties are. Let us have it all over again.

A. General Manager of the Company.

Q. Now, what do you do?

A. In all matters, excepting corporate and finance.

Q. You have nothing to do with corporate or financial matters at all, is that it?

A. Yes, sir.

2204 Q. All right. What are the other matters, all matters, now, except those two?

A. All phases of theatre operation, from the beginning of the opening of the Theatre until the closing of it, and the maintenance of it, and all the maintenance of it, and supplying it with its entertainment, advertising its entertainment, and so forth.

Q. How about the rents you pay for your different theatres, do you have anything to do with that?

A. I do not. That is a corporate matter. I regard that as a corporate matter. I have nothing to do with that.

Q. That is taken care of by Mr. Balaban?

A. Mr. Balaban.

Q. You have testified at length, however, about the building up of the chain of these theatres over a period of time. Were you testifying from your own knowledge or were you testifying from what you heard in your position?

A. I don't recall testifying as to anything about building up the Company's properties.

Q. You testified: "In the old days the show business was far different from what Balaban & Katz intended it to be in their theatres, and they were successful in 2205 developing standards for their employees to follow to make a patron more welcome in the theatre?"

A. Yes.

Q. Now, are you testifying about the early days of the Balaban boys, or what you know about it yourself?

A. I am talking about the both. It so happened that some time back I was in the theatre business. I used to play a violin in a motion picture theatre many years ago, and I know something about the old time theatre.

Q. Well, do you know anything about the operations of the Balabans in the early days?

A. Well, I—

Q. I mean of your own knowledge, now, what you knew yourself?

A. I know about Mr. Katz's theatre at 31st and Wentworth avenue, where I worked.

Q. I didn't ask you about Mr. Katz's theatre. I asked you about the Balabans.

A. Oh, I thought Balaban & Katz, I beg your pardon. The Balaban Theatre, the Circle Theatre, on 12th Street, I was interested in watching the development at the time, then gave up the idea.

Q. You were interest in watching the develop-
2206 ment. Now, what does that mean?

A. Of motion pictures.

Q. Oh!

A. I foresaw the development of motion pictures entertainment. I saw it in the distance and was interested in becoming a definite part of it, but I gave up the idea.

Q. Now, when was that?

A. That was in nineteen hundred—well, I was eighteen, nineteen years old, and I am fifty-two. The difference is 33, so it would be about 1911.

Q. Now, when was your first knowledge about the Balabans, that is what I am trying to get at?

A. About that time.

Q. And they were theatre operators here in Chicago at that time, were they?

A. Yes, sir.

Q. Now, what did you know of the Balabans, of your own knowledge, from that time down to the time that you went with the Balaban & Katz organization, not what you heard, or somebody told you, but what you knew of your own knowledge?

A. Well, I was not in Chicago, and what I knew was what I heard. I knew nothing beyond that.

Q. So anything that you have testified about is
2207 what you have heard somewhere, up to that time?

A. I read it.

Q. Or read it, or heard it?

A. That is right.

Q. But not of your own personal knowledge?

A. No.

Q. You testified at some length about the cooling system. Do you remember that?

A. Yes, sir.

Q. The difference between carbon dioxide and freon gas?

A. Yes, sir.

Q. How long during the year do you run your cooling system?

A. Usually from the beginning of the hot period until the starting of the cool period. It varies each year. We start immediately with the need of it. Oh, I would say six months, half a year.

Q. About half a year?

A. The freezing unit of the conditioning equipment.

Q. Have you had any comparison made of your box office receipts, the use of one system and then the other, in this theatre that you say is changed over from carbon dioxide to freon?

A. No. The result is the same.

Q. Now, there was testimony here by Mr. Eck-
2208 hardt that he had suggested a new system of clearance for the Chicago district. Do you recall any talk with Mr. Eckhardt about a new system of clearance?

A. Yes, I do.

Q. When was that?

A. I don't recall the time.

Q. Well, about when was that?

A. The last five years, sometime, about two or three years ago, four years ago.

Q. Where was it?

A. My office.

Q. Who was there?

A. Mr. Eckhardt and myself.

Q. No one else?

A. Probably a member of my booking department and film buying department. I would'nt know. I don't recall.

Q. The net of it was that you rejected his system, wasn't it?

A. We have rejected some and approved of some. I don't know which one you are referring to, Mr. McConnell.

Q. Well, let us see if we can find out which one we are talking about. What was the first one that was discussed?

2209 A. Well, there was a system, a proposal that the C houses, changing only the method of release in C houses, down to giving the C houses two weeks of release, as well as the B houses, in order to give them a flexibility of booking. I don't recall any objection to that one.

Q. Well, what was the next?

A. The other one was the possibility of arranging to have our C houses open on Friday instead of Sunday with a new show. We did not object to that, only on the grounds of the additional film rental that Fox wanted to get out of us for the pictures, so that resulted in an objection on our part. That was the reason for it.

2210 Q. Well, you did not accept it?

A. Did not. I don't know of any other changes.

Mr. O'Brien: I can't hear you. Will you keep your voice up?

The Witness: I don't know of any other proposition of Eckhardt's.

Mr. McConnell: Q. I show you Plaintiffs' Exhibit 56, which apparently bears your signature (handing document to the witness).

Mr. Adcock: What was that exhibit number?

Mr. McConnell: 56.

(Witness examines document.)

Q. Did you and Mr. Eckhardt have any discussion about the provisions there with reference to the Chicago and suburban system of release before that contract was signed?

A. I don't think Eckhardt and I ever discussed the system of release for Chicago and suburbs. We may have discussed this particular clearance as it relates to our theatres.

Q. Where there is language in that contract with reference to the suburban system of release, where did that come from?

Mr. Seeley: I object to that on the ground there is no showing there is any language in there.

2211 Mr. McConnell: Well, the contract is in evidence. I am trying to show—

The Witness: Do you mind if I read it?

Mr. McConnell: No, go ahead. Read it.

(Witness examines document.)

Mr. Adcock: Is there a question pending?

Mr. McConnell: He asked to read the contract, and he is now reading it.

Mr. Adcock: Is any question pending?

Mr. McConnell: Yes, there is a question pending.

Mr. Adcock: All right, I am asking if there is a question pending. I would like to have it read.

(Question read as follows: "Where there is language in that contract with reference to the suburban system of release, where did that come from?")

Mr. Adcock: Now, if the Court please, I object to the question.

The Court: What is your objection?

Mr. Adcock: He wants to call attention to certain language, direct the witness' attention to it by referring to it and reading it. I have no objection to the question, but to ask a general question of that sort—

2212 The Court: Well then, the witness wants to know if he could read the contract before he answered it and I understand that is what he is doing now. Isn't that about where we stand?

Mr. McConnell: That is exactly right.

The Witness: I have read enough of it. Now what was that question?

Mr. McConnell: Read the question to the witness, please.

(Question read as follows: "Where there is language in that contract with reference to the suburban system of release, where did that come from?")

Mr. Adcock: It assumes that there is language there.

The Court: The witness said he had read enough of the contract to answer the question. Frankly, I don't know what is in the contract.

The Witness: I don't see any reference to suburban run.

The Court: Your answer is there is no such language in the contract, is it?

The Witness: That would be my answer.

The Court: That was the objection Mr. Seeley made.

Mr. McConnell: All right.

(Document returned to Mr. McConnell by the witness.)

2213 Mr. McConnell: Q. Where did this language come from, Mr. Immerman:

"No theatre in the State of Illinois north of a latitudinal line running parallel to Springfield, excluding Springfield, Quincy and Galena, also Decatur, or, in Indiana, in LaPorte, Starke, Pulaski, Porter, Jasper, Lee or Newton counties to play prior to or during run at this theatre."

Referring to the Garrick.

"Theatres in Lake, DuPage, Cook and Kane counties, Illinois, not to play until last day of this theatre."

The Witness: Well, this agreement was not made up by me. Fox presented that to us for the clearance. I don't know who made the language up for them.

Mr. McConnell: Q. In other words, this was just something tendered to you by Fox, is that it?

A. Part of the contract, yes.

Q. Well, didn't you have some negotiation about the contract?

A. Yes, sir.

Q. Before you reached your agreement on terms?

A. Yes, sir.

2214 Q. And the contract represents your negotiation and agreement on terms, doesn't it?

A. Yes, sir.

Q. Now, who suggested that language in the contract?

A. I don't know.

Q. You don't recall?

A. I know who suggested the specific grounds over which we wanted clearance, but the language is not mine at all.

Q. All right, who suggested that?

A. That was the result of our negotiations.

Q. And you suggested it, didn't you?

A. Sure.

Q. Now, you say you don't know who suggested the language?

A. No. It was written in by somebody else. I don't know.

Q. Well, who usually writes up your clearance agreements?

A. This is not ours. We did not prepare this clearance agreement. They are always written up just like a contract by the one who is selling the pictures.

Q. They wrote it up and you did not, is that it?

2215 A. That is right.

Q. But you gave them the terms that you wanted in it?

A. Yes, sir.

Q. All right. Who suggested this:

"The following clearance schedule for the city of Chicago release to be observed: First week, second week and third

week open; fourth, fifth and sixth week, regular established A pre-release theatres may play during this period. Minimum adults admission per person 30 cents, matinee until 6:30 p. m., after 6:30 p. m. 50 cents."

Who suggested that?

A. Fox.

Q. You did not suggest it?

A. No. That is a restriction they placed on us for the classification of price and admission in our theatre.

Q. All right. You did not suggest it?

A. No.

Q. And the same is true of the seventh and eighth week and the minimum admission price of 40 cents; right?

2216 A. Yes, sir.

Q. And of the ninth week?

A. Yes, sir.

Q. And the tenth week?

A. Yes, sir.

Q. All right. Now, all the other distributors made the same request for minimum admission prices, didn't they?

A. I believe so.

Q. Well, you know so, don't you?

A. Yes. I don't know whether they made the same request or not. The result was about the same. There are many things happen in those negotiations. It is difficult to recall them all. This is specifically important and does vary.

Mr. McConnell: Now I ask that all the explanation go out, if the Court please.

The Court: All right, the explanation goes out.

Mr. McConnell: Q. Now, you do your negotiations with your film distributor at the time or prior to the time of your Loop run, isn't that correct?

A. Yes, sir.

Q. In other words, you don't buy any pictures from any distributor until you have come to an agreement

2217 on your clearance; right?

A. Yes, sir.

Q. And you buy your Loop pictures first, you testified to that the other day, didn't you?

A. The pictures we play in the Loop, yes.

Q. But, prior to the time you buy them, you have made your clearance agreement for your whole chain of theatres

and that is represented in a contract similar to the one I have shown you here, Plaintiffs' Exhibit 56?

The Witness: I don't understand the question.

The Court: Read the question.

Mr. Adcock: He stood looking away from the witness part of the time.

The Court: Yes. Now we will have the stenographer read it and see what the question was.

(Question read as follows: "But, prior to the time you buy them, you have made your clearance agreement for your whole chain of theatres and that is represented in a contract similar to the one I have shown you here, Plaintiff's Exhibit 56?")

2218 A. No.

Mr. McConnell: Your clearance provisions—all right, the answer is all right.

Q. Now, all of your contracts with all of your film companies provide that if you do not play the picture at the minimum admission price then you forfeit the run or lose the run; isn't that correct?

Mr. O'Brien: I object to that question, as to what the contract provides, if the Court please. They are all in evidence. Mr. McConnell insists on asking—

Mr. McConnell: I want to know what this man knows about this business. He has testified here as an expert.

Mr. O'Brien: That is not the case at all. You have been trying indirectly, each time over objection sustained, to get the witness' version in the record. The contract is already in evidence.

Mr. McConnell: I am not trying to vary the contract.

Mr. O'Brien: No human being can remember what that contract provides. I object to it.

The Court: As I understand this question it is more a question as to what the practice is rather than
2219 what is in the contract.

Mr. O'Brien: Well, that is not the question.

Mr. Adcock: That was not the question.

The Court: Of course it is understood that this witness cannot vary the terms of the contract, either by the answer he makes or by the question Mr. McConnell asks him, but I think he may answer this question. Do you remember what the question was?

The Witness: I don't.

The Court: All right. What is the question, please?

Mr. McConnell: Read the question to the witness.

(Question read as follows: "Now, all of your contracts with all of your film companies provides that if you do not play the picture at the minimum admission price then you forfeit the run or lose the run; isn't that correct?")

The Witness: There is a provision,—I don't know the language. We are required to charge the minimum price. What the penalty is, I don't recall, if there is one—what happens if we don't. If you will get the contract, I—

Mr. McConnell: Well, let us get the contract.

2220 The Witness: You could not very well give up the run on the picture after you have run it. I don't quite understand the question.

Mr. McConnell: Q. Well, is this language in your contract, words to this effect, in all of them:

"If during any such period less than said admission price is charged, the Distributor, in addition to all other rights hereunder, shall have the right (a) to immediately terminate the license of the motion picture then being exhibited and/or all remaining pictures not theretofore exhibited hereunder, by written notice to such effect to the Exhibitor. Upon the giving of such notice the license to such motion picture and/or motion pictures shall forthwith terminate and revert to the Distributor and the Distributor may, at his option, declare such failure or refusal a breach of the entire contract entitling the Distributor to recover from the Exhibitor as damages therefor the license fees payable in respect of all motion pictures not thereinbefore exhibited hereunder."

2221 Mr. Adcock: If the Court please, I object.

The Court: I think that objection is good. He is asking this witness if certain language isn't in the contract. The contract is in evidence. The objection is sustained.

Mr. O'Brien: About 500 contracts in evidence.

Mr. McConnell: I asked him if he knows whether or not that is there. I want to find out what this man knows about this business.

Mr. O'Brien: All right, if he knows let him say so; if he doesn't, let him say that.

The Court: Then I imagine the question is: "Do you know what is contained in these contracts?"

The Witness: Of course, I never signed the contract, but I do know there is a similar provision to that in almost every contract.

Mr. McConnell: Q. And that includes not only the defendants in this case, but all distributors; right?

The Witness: All distributors, yes.

Mr. McConnell: I wonder if we might have a recess here for a minute?

The Court: Yes. Recess for ten minutes.

(A recess was accordingly taken, after which the following further proceedings were had herein:)

2222 Mr. Seeley: Your Honor, I had brought the witness here who will be next after this cross-examination, and he happens to be Chairman of the Red Cross drive in this industry, and there is a meeting going on which is quite important to him. If he is needed here this afternoon he will, of course, stay; but I wondered if Mr. McConnell estimates that this cross-examination of Mr. Immerman will probably consume the rest of the afternoon or not?

Mr. McConnell: Well, if I continue with this cross-examination, I think it is going to continue not only this afternoon, but tomorrow morning.

Mr. Seeley: Oh; then this man can go to his meeting.

The Court: Then that is the answer to your question.

Mr. McConnell: If he wants to put him on now, I can continue this—

The Court: No, you go ahead with Mr. Immerman, because we want to adjourn a little early this afternoon.

Mr. Seeley: I see. That is fine. Thank you, sir.

The Court: You can send your man away, so he need not stay around.

Mr. Seeley: Thank you, sir.

The Court: All right, Mr. McConnell.

2223 Mr. McConnell: Q. Now, Mr. Immerman, in these clearance agreements you took clearance over theatres which were not even built, didn't you?

A. We may have taken clearance over locations where no theatres had been built, in villages or cities, yes.

Q. Well, didn't you take clearance over a new theatre that was building?

A. I don't recall. I would have to see it.

Q. You don't remember that at all?

A. No, I don't.

Mr. McConnell: Have you copies of that correspondence that you gave me? You remember, I asked you for the correspondence file.

Mr. Adcock: You don't remember the exhibit numbers, do you?

Mr. McConnell: Well, they were taken on Mr. Immerman's deposition.

(Mr. Adcock examines files.)

Mr. McConnell: Q. We find that you did take clearance over theatres that were building. Did you make any investigation of those new theatres, to determine their physical conditions?

Mr. Adcock: I wonder if you would repeat that ques-
2224 tion? My attention was called to something else.

Mr. McConnell: Well, let's stop. You can't do two things, Mr. Adcock. I want to get those.

(Mr. Adcock examines files.)

Mr. Adcock: Mr. McConnell, I have here some correspondence, I believe, at any rate, certain papers that were marked in connection with the taking of the deposition of Mr. Immerman, as Immerman Exhibits 1 to 16, both inclusive, and I furnished you at that time with photostatic copies of them. (Presenting papers to Mr. McConnell.)

If they are used in evidence, I would like photostatic copies to be substituted.

(Mr. McConnell examines papers.)

Mr. McConnell: Well, we will have to pass that for the moment.

Q. In making your clearance demands on your distributors, do you have a clearance letter or protection letter which you give to the different distributors?

A. I don't recall ever having given one.

Q. Do you have any correspondence about your deals at all?

2225 A. Very little, if any.

Q. Where are those deals usually negotiated?

A. Right in Chicago, in my office.

Q. In your office?

A. Yes, sir.

Q. Are they all orally negotiated?

A. Yes, sir.

Q. In your demand for clearance, where do you get—what is the data you use in making your demand for clearance?

Mr. O'Brien: I object to this—just a minute—the term "demand for clearance." I haven't heard of any demand for clearance. The witness never said that.

Mr. McConnell: Q. Well, you do request clearance, do you not, from the distributor?

A. Yes, sir.

Q. All right, your request for clearance; how is that made up?

A. We usually use the basis, as a basis, the clearance of the preceding year or season in each case.

Q. Well, that goes back to a beginning some time, does it not?

A. I presume so. It was there when I came.

Q. In the beginning—you weren't present in the beginning, is that it?

2226 A. Yes, sir.

Q. Yes or no?

A. I wasn't.

The Court: Q. "Yes, I was not present"—is that your answer?

A. Yes, I was not—that's right.

Mr. McConnell: Q. So that all you know about clearance is that you found something in a contract, and you have carried that on since you have been with the Balaban & Katz Theatres, is that right?

A. Not quite that simple. It wasn't quite that simple.

Q. Well, if it isn't that simple, let's see what the variations are. Now, what changes have you made?

A. No, in the beginning—

Q. Now, just a minute. You don't know anything about the beginning, because you weren't here, were you?

A. No, but when I came—

Q. All right. Now, when you came, what did you do?

Mr. Adcock: I think it would be wise to let the witness go ahead with his answer.

The Court: I think they are starting off all right now. He is going to tell what has happened since he has been here.

2227 The Witness: A. I made a general tour of inspection to familiarize myself with the facts, and as they were presented in the clearances so that I could feel I was doing the job well. I didn't want to accept the record entirely. I did devote some time to study.

Mr. McConnell: Q. Well, you went out and studied. But what difference did you make in the clearance?

A. I don't recall, if any. It is a long period, twelve years.

Q. You don't recall any differences, or any changes?
A. If there were any, the clearances would show them.
Q. Well, if there were any changes, wouldn't they appear on that chart that you have produced here?
A. Not as to clearance over someone else's theatre.
Q. Can you recall any changes that you made in clearance?
A. Over someone else's theatre?
Q. Well, clearance is always over someone else's theatre, isn't it?
A. Yes.
Q. All right. Do you recall any time you have made any changes in the clearance in your negotiations?
A. Yes.
2228 Q. When?
A. I don't know as to when.
Q. Well, over what theatre?
A. The general period—well, the Montclare Theatre, out on Grand Avenue, I recall that very definitely.
Q. All right, who owns the Montclare Theatre?
A. I think a fellow by the name of Charnkas.
Q. What change did you make?
A. He advanced his playing position from "C" week to "B" week over our clearance of the Marbro Theatre.
Q. And you permitted that, did you?
A. Yes, sir.
Q. All right, do you recall any other change that you negotiated?
A. Off-hand, I don't.
Q. You testified here on your direct examination about running "Bank Night" in the Balaban & Katz theatres. When did you start with your "Bank Night"?
A. Well, it ran principally through the year 1936, but I believe it started some time in the latter part of '35.
Q. Well, have you any records that show when you started with it?
A. I imagine we have records to show that. I
2229 don't know whether we have them here.
Q. Is that within your province, as running the theatres?
A. Yes, sir.
Q. That isn't the finance department?
A. No, sir. It was.
Q. You say it was?

A. It was productive of finances.

Q. Yes, but you had charge of it?

A. I did.

Q. Can you narrow it down any closer than that without your records?

Mr. Adcock: Your Honor please, I think that this examination, and an examination of the witness on questions about "Bank Night"—I thought it was during the examination in the plaintiff's case, but I may be mistaken. Not being sure, I will not press the objection.

Mr. McConnell: Well, you examined him on it.

Mr. Adcock: Well, I am not certain. I am withdrawing any objection.

The Witness: A. It was between the latter part of '35 and the end of '36; about a year, maybe thirteen months, or fourteen months.

2230 Mr. McConnell: Q. Now, what theatres did you play "Bank Night"?

A. I believe all of them, with very few exceptions.

Q. Including the Loop theatres?

A. Excepting the Loop.

Q. Everything outside the Loop?

A. Yes, sir.

Q. And what days of the week? Every day, or just part of the week?

A. Not every day. One day, or not more than two, but one as a rule. It depended upon the playing position of the theatre. Sometimes, in the multiple-change houses, we may have had it twice.

Q. Well, do you recall of the theatres that we have been talking about now in this lawsuit, in this district out in South Chicago—how about the Tower Theatre, when did it play "Bank Night"?

A. I couldn't tell you when,—

Q. Well, have you got any records—

A. (Continuing)—in that period.

Q. Have you got records from which you can testify and give us that information definitely?

A. I believe so. I don't know that we have it here.

Q. Have you got it in your office? Can you have them here tomorrow morning, so we can examine you on

2231 them?

A. I believe so. I will try to bring them.

Q. Will you do that?

A. Yes.

Q. Now, in those "Bank Nights" that you had, you say you had increased patronage?

A. Yes.

Q. Is that right?

A. Yes.

Q. Did you keep a record of how much increase in admissions you had for the period of the "Bank Night" and the days of the "Bank Night"?

A. No. We have records that would reveal the conditions. We keep a chart of our business.

Q. Well, would those records show anything more than that you had more patrons on certain nights than you did on others?

A. Yes.

Q. What would they reveal with reference to that?

A. Well, they would reveal that "Bank Night" was the best night of the week.

Q. They would reveal more people coming into your theatre on that night?

A. Yes, sir.

Q. Now, you had how many theatres out there in our district running "Bank Night"?

2232 A. Well, we have the Tivoli, the Maryland, the Tower—Southtown isn't in your district, I don't think. The three theatres.

Mr. Seeley: It is a little hard for me to hear you.

The Witness: Three theatres.

I had my hand in front of my mouth.

Mr. McConnell: Q. You had three theatres?

A. Yes.

Q. And they were all in competition with the Jackson Park, weren't they?

A. Yes, sir.

Q. And the patrons they drew on their "Bank Night" they drew from the same patrons that the Jackson Park had to draw from, didn't they?

A. Yes, sir.

Q. So that your increased admissions represented drawings from the patrons the Jackson Park was attempting to draw from for its patrons?

A. Yes, sir.

Q. What was the nature of your game that you were playing called "Bank Night"? What was the nature of it?

A. The patrons registered, and the number of the
2233 registration was placed in a drum, and there was a drawing of the number, and the lucky number would be paid off.

Q. How much in the way of prizes did you give?

A. Quite substantial.

Q. Well, how much would they be?

A. Up to 1,000, $1,500.

Q. To 1,000?

A. 1,000, 1,500, I think in some cases 2,000 in the larger theatres. Down to $50.00 in the smaller theatres.

2234 Q. Now, you testified as to double features, instituting double features. That came after the close of Bank Night, didn't it?

A. Yes, following.

Q. When did Bank Night close?

A. In the fall, late fall, but probably December, I think we discontinued it, before many of the other theatres did,—of 1936.

Q. Well, what was the occasion for your ceasing?

A. Well, there was some court action indicating it was a violation of an ordinance.

Q. You had stopped it when the city authorized the stopping of it, is that right?

A. No, we stopped before, if I recall correctly.

Q. All right. Then you said you went into double features, you went into double features at the Tivoli, when?

A. The Tivoli is an A house. A houses started earlier than the later runs, approximately between October 1st and November 1st, in there somewhere.

Mr. Adcock: If your Honor please, this same chart shows all that data.

The Witness: I forgot about the chart.

Mr. McConnell: Q. When did you start it at the
2235 Maryland?

A. The Maryland Theatre started double featuring the second time on December 25, 1936; and the Tivoli, October 16 is the date here.

Q. And the other theatres?

A. The Tower, November 24, 1936.

Q. Now, you said you made an investigation, a study, of double featuring before you instituted it. What was the nature of that study?

A. It was an investigation in conjunction with the study

of the results of double featuring against single featuring, in some theatres in Chicago, quite a number of them.

Q. What data did you use?

A. Just observation, box office check by watching the attendance of the theatre, approximately; that is, in Chicago and towns out of the city. Double featuring had been in vogue a long time prior to our going into it. We observed that it was a box office stimulant and decided to use it ourselves; for the same reason, policy.

Q. You tried it in 1930 and 1931, didn't you, for a while?

A. Yes, we did.

2236 Q. How long did you run it then?

A. I think the chart shows that we didn't run double features in all of our theatres in 1931. For instance, the Paradise Theatre, the double featuring here was April 22, 1932. It looks like they closed the house June 10, 1932.

Q. It did not work out very well there, did it?

A. No, it didn't. The Southtown started double featuring December 25, 1931, and continued until September 30, 1932.

Q. You abandoned it, did you, about after six months?

A. Yes, sir.

Q. Had you made a study of it before you put it in that time?

A. Yes.

Q. You testified here the other day that in times of prosperity, the public had more money in the pocket. Remember that?

A. Yes.

Q. Remember that testimony?

A. Yes, sir.

Q. The public had more money to spend in the big theatres. Was that the gist of your testimony?

2237 A. That was the gist of it. They had more money to spend for the things they wanted.

Q. That was true in times of prosperity when the people were making money, is that right?

A. That is right.

Q. And in times of depression, there was not so much money in the public pocket, is that right?

A. That is right.

Mr. Adcock: Well,—

Mr. McConnell: This is his testimony.

Mr. Adcock: All right.

Mr. McConnell: Q. And in 1930 and '31, there was not much money in that public pocket, was there?

A. There was not much in mine. I recall that was the beginning of the depression.

Q. I am asking you about the public pocket, not yours.

A. I am one of the public. We were all affected alike, I think.

Q. Now, the 75-cent admission in the Loop was not very attractive to that public in 1930 and '31, was it?

A. No, sir.

2238 Q. In fact, you moved some of your theatres back, didn't you?

A. Not 1930 and '31; 1931 and '32.

Q. All right. I will take your years. You moved some theatres back to get the lower admission price, didn't you?

A. In the Loop?

Q. I did not say the Loop. I said, you moved some theatres back to get the lower admission price, didn't you?

A. Yes, sir.

Q. Quite a number of them?

A. A large number of them.

Q. Because the public did not have that money in the pocket to buy the higher prices, you moved it back, is that right?

A. That is right.

Q. In 1936 and 1937, the public had a little more money in that pocket, did it?

A. Things were getting better. There was an improvement.

Q. They were very much better, weren't they?

A. Not in 1936. 1937 was the time they improved and started—

2239 Q. Well, let us take 1937. That was very much better, wasn't it?

A. It was better than 1936.

Q. And 1936 was better than 1935, wasn't it?

A. Economically, no.

Q. Had you made any study of economic conditions at that time?

A. We got reports from experts that indicate the trend.

Q. Well, the trend was up, wasn't it?

A. In 1935 it started to go up, and a little more in 1936, but 1937 was the first real indication of it.

Q. It started to go up in 1936, in the latter part of 1936, you made a study of double features, is that right?

A. That is right.

Q. And you put double features in your subsequent run theatres?

A. That is right.

Q. Now, you testified in answer to a question here, that when you put double features in, you did not have to ask anybody about it, because you were not playing all the product under single features. Remember that?

2240 A. I don't recall that.

Q. Were you playing all product under single features?

A. Not in all of the theatres; in some of them.

Q. You were not playing it in any of them, were you?

A. Very close to these companies. I think I testified to that.

Q. Did you or not testify that you were not using the product?

A. I don't recall what I testified.

Q. How many pictures did the Tivoli play under single features a year?

A. About 52, one a week.

Q. How many pictures did the Maryland play?

A. About three a week, about 156 a year, more or less.

Q. How many pictures did the Tivoli play under double features?

A. Twice 52, which would be 104 pictures.

Q. And the Maryland?

A. The Maryland would play 25 per cent more, or 30 per cent more the number of pictures.

Q. The Maryland would play twice as many,

2241 wouldn't it?

A. If they had the same number of changes, but that was not the case.

Q. Well, what was the case?

A. The Maryland was making fewer changes than in the single feature policy.

Q. How many changes does it make?

A. Two, principally, and quite frequently three. If it makes three changes, it would use six pictures; and if two changes, four pictures.

Q. Have you a record of the picture changes of the Maryland?

A. At the office, yes.

Q. Yes. Can we have those tomorrow, too, so that we can go into that?

The Witness: Is somebody making a record of these?

Mr. Goldberg: Yes. That is the second—

Mr. McConnell: I am only asking for two.

The Court: Have you finished?

Mr. McConnell: Yes.

The Court: I have to meet some attorneys inside here. We will take a recess until tomorrow morning at 10:30.

2242 (Whereupon the trial of the above entitled case was continued to Thursday, March 2, 1944, at the hour of 10:30 o'clock a. m.)

2243 In the District Court of the United States.

(Caption)

Before Igoe, J., and a Jury.
Thursday, March 2nd, 1944.
10:30 o'clock A. M.

Court met pursuant to adjournment.

Present:

Mr. McConnell,
Mr. Korfist,
Mr. Adcock,
Mr. Goldberg,
Mr. Seeley,
Mr. O'Brien.

2244 WALTER IMMERMAN, having been previously sworn, resumed the stand, was examined further, and testified as follows:

Cross-Examination by Mr. McConnell (Cont'd).

Q. Mr. Immerman, I asked you yesterday about a new theatre that was being built. Do you recall a new theatre being built on Milwaukee Avenue directly opposite the Admiral?

A. No, I don't.

Q. Do you recall a letter under date of—

The Witness: (Interrupting.) The Admiral Theatre is not on Milwaukee Avenue.

Mr. McConnell: I guess it is opposite the Gateway Theatre.

Q. Do you recall a letter, under date of December 6th, which provided that: "The clearance for the Gateway Theatre should be changed from: 'Terminal not to play earlier than same week. Village of Park Ridge and Portage not to play earlier than 1st week general. Admiral and Casimir not to play earlier than 2nd week general. New Theatre being built on Milwaukee Avenue directly opposite this theatre to play in 2nd week if Gateway plays 'B' and 3rd week if Gateway plays 'C'."

2245 A. I don't recall—

Mr. Adcock: If your Honor please, I think the witness should be shown the letter. That is the ordinary method of cross-examination with reference to the contents of a document?

The Court: Do you have the letter there?

Mr. McConnell: I asked counsel for the letter yesterday, and he produced documents 1 to 16. This is Immerman's Exhibit 18 on the deposition. I haven't got the document; apparently it never was given to me. He gave me photostats of 1 to 16. The documents must be in Mr. Adcock's possession.

Mr. Adcock: Just a second, your Honor. You have Exhibit 18—

Mr. McConnell: All right. We will pass that until we get the exhibit.

The Court: Suppose you get into something else, and then he can look that up.

Mr. McConnell: Q. Do you recall you testified, Mr. Immerman, that Balaban & Katz was opposed to a mixed policy?

Mr. Adcock: I object to that, that he stated that, that he testified to that. He did not testify they were opposed to a mixed policy. That is an improper conclusion 2246 from what was said by the witness.

The Court: Well, I don't remember what he testified to.

Mr. McConnell: I asked the witness if he remembered testifying about it.

Mr. Adcock: About a mixed policy, he did, yes.

Mr. McConnell: Q. Do you remember testifying about a mixed policy?

A. Yes, sir.

Q. What is a mixed policy?

A. Prior to my testimony I had believed it to be something different from what was discussed. A mixed policy, as you speak of it, and as I understood you to speak of it, was a policy wherein a theatre in a particular run played two different runs in the same week, or one run one week and another run next.

Q. Is that your understanding of it?

A. I won't change my application of the term in the trade, but mixed policy to me is a stage show and a picture.

Q. Is a what?

A. A stage show and a picture simultaneously in the same week.

Q. You apply the same reasoning there?

A. It could be.

2247 Q. In other words, in the Balaban & Katz theatres you do not play one picture in B week and another in C week?

A. We have, but—

Q. In a given theatre?

A. We have.

Q. Well, how often have you done that?

A. Not very often. We did it during the—well, not very often.

Q. At the present moment are you doing it anywhere?

A. No, sir.

Q. Now, in your negotiations for clearance, with the different distributors, in order not to have the mixed policy you would have to have your distributors agree on the same schedule of clearance, would you not?

Mr. Seeley: I object to that.

The Court: What is the objection?

Mr. Seeley: It calls for an answer to a hypothetical situation. It calls for a conclusion as to what distributors might do. How could he know what they do?

Mr. McConnell: I am questioning him about it.

The Court: The objection is overruled. He may answer the question.

2248 The Witness: Will you read the question?

(Question read.)

A. They would have to agree with me, each individual distributor.

Mr. McConnell: That is what I mean.

The Witness: Yes.

Mr. McConnell: Q. And you deal with how many distributors in your period of negotiation?

A. Well, we deal with everybody that produces pictures, probably eleven or twelve companies.

Q. And they all agree on the same schedule of clearance, ultimately?

Mr. Seeley: I object to that. That is not what the witness said. He said they separately agreed with Balaban & Katz on the same one.

Mr. McConnell: He said with him. I am asking if they all agree with him on the same schedule of clearance.

Mr. Seeley: As long as you ask that, I have no objection.

The Witness: A. On such pictures that we buy from them, yes, sir.

Mr. McConnell: Q. And if they did not, you would not buy the picture, would you?

A. That is right.

2249 Q. Mr. Immerman, do you recall my asking you the question, at the time the double feature policy was instituted, whether there were negotiations between your Company, Balaban & Katz, and the defendant distributors with reference to whether or not product could be supplied for double feature programs, and that you answered that question, "We didn't ask anybody if the product could be supplied. We knew the product was available." Was that question asked?

A. Yes, sir.

Q. And answer made on your deposition, prior to this trial?

A. Yes, sir.

Q. And I asked you, you recall, "How did you know that?" And your answer was, "Many pictures were not being played in the theatres that we operated, playing weeks". Do you recall that question?

A. Yes, sir.

Q. And answer?

A. Yes, sir.

Q. And do you recall my asking you the question, "You

made a request for the extra product", and your answer: "That is right"?

A. Yes, sir.

Q. And the question, "Which would be necessary 2250 for that program", and your answer was: "Yes"?

A. Yes.

Q. And the question, "From these distributors", and your answer: "That is right"?

A. Yes, sir.

Q. And I questioned you, "And they agreed to furnish it": and your answer, "Yes, sir"?

A. Yes, sir.

Q. And that I asked you, "And furnish the extra product in certain weeks of release", and you answered: "Yes"?

A. Yes, sir.

Q. Now, in your south side theatres, under single features, how many pictures did the Tivoli play a year?

A. Approximately one a week, 52.

Q. 52 a year. And how many did the Tower play?

A. During the period it played A week, one a week; when it played B week, it would be two.

Q. Well, during the period 1932 to 1936 it was playing in A week, was it not?

A. Let me have that record, will you please?

Mr. McConnell: (Handing document to the witness.)

The Witness: The Tower Theatre was playing A 2251 week in 1930, '31 and '2, C week in 1933, '4 and '5 and '6, up until April; then B week, and during the time that it played in A week it used one picture a week, C week three pictures, and B week two pictures, single feature; it did not play in B week during any of its single feature time, according to this chart.

Q. Did not go into B week?

A. Did not play single feature.

Q. Did not get into B week, then, until double features were instituted, is that correct?

A. No. They went into B week October 30th, about a month before double features, according to the record here. I just see another date, October 30th, 1936: B week, April 17th, 1936, it played part of the pictures in B week, from that period until October, the chart indicates, they played in B week single feature, and starting November 24th, 1936, B week double feature.

Q. Well, within a month or six weeks after the time they went into B week, they started playing double features?

A. Yes, sir, according to the record.

Q. Well, under single features how many were they playing over the period immediately preceding double features?

2252 A. They would play three pictures a week, perhaps two.

Q. Didn't you testify here yesterday or the day before that the Balaban & Katz C week theatres only had two changes a week?

A. Yes, I would testify to that today, too. Double feature only have two changes a week now.

Q. Under single features, though, you say you had three changes a week?

A. That is right.

Q. For C week?

A. That is right.

Q. All right. How many pictures was the Tower playing prior to double features?

A. From one to three pictures a week, depending on the policy.

Q. Well, that would be from 52 to one hundred and—

The Witness: 156.

Q. 156?

A. That is right.

Q. And the Maryland Theatre, how many pictures was it playing under single features?

A. The Maryland Theatre always played in C week under single feature time, about three pictures a week, and under double feature time from four to six, mostly four pictures a week.

2253 Q. Now, can you total those pictures in single week that those three theatres played per week?

A. Well, I don't understand the question.

Mr. Adcock: Well, it is a matter of—

Mr. McConnell: All right.

Mr. Adcock: (Continuing:) —multiplication.

Mr. McConnell: All right, I won't call for that.

The Court: It would be addition.

The Witness: The same pictures; can not add the same pictures.

Mr. Adcock: The same pictures.

Mr. McConnell: Q. Now, when you instituted double

features, you needed more product, did you not, for those particular theatres?

A. Yes, sir, we could use more.

Q. Had more playing space available?

A. Yes, sir.

Q. Now, going back to another topic for a moment, the earlier run picture is more valuable to you, as an exhibitor, at the box office, for the reason that it has not been shown all over the neighborhood, isn't that correct?

A. Yes, sir.

Q. It is more unique, and it is newer to the public,
2254 correct?

A. A picture is always new until you have seen it. It is the first time it is run in the territory it has a larger box office potentiality.

Q. Less as people have seen it?

A. That is right.

Q. And the more pictures that have been shown in a given neighborhood by one or more theatres, the less valuable they become to the subsequent run theatre, isn't that correct?

A. Yes, sir.

Q. And the subsequent run theatre, then, has less to offer to the public?

Mr. O'Brien: I object to that.

Mr. McConnell: Q. (Continuing:) In the way of entertainment value?

A. I don't understand your question.

Mr. O'Brien: It is an argumentative question.

The Witness: Read the question.

The Court: He said he does not understand the question, so that eliminates it.

Mr. McConnell: Q. Now, under your direct examination you testified in substance that the larger, the more de luxe theatre had greater attractiveness to the public, and
2255 that was the reason that you could pay more film rental for the larger theatres; do you remember that testimony?

A. I didn't give that—

Mr. Adcock: If your Honor please, I think that assumes—

The Court: He said he didn't give it, so that answers that.

The Witness: I didn't finish the answer.

The Court: Oh, he says he didn't finish the answer. What is the rest of it?

The Witness: I didn't give that as a reason why the theatre alone, for that reason, would give them more business. It is not very good grammar, but you get the point.

Mr. McConnell: Q. Do you remember you were asked the question by Mr. Adcock: "Why do you pay more in the early runs and less in each of the successive runs?"

A. Yes, sir.

Q. And you answered it: "Because the Theatre that runs the picture to begin with is located so that it would draw from a large area, in a central location, such as our Chicago Theatre, the State-Lake, the Roosevelt, in the center of the Loop of Chicago. They are accessible to all forms of transportation, trains, cars, elevated,
2256 buses, private cars and walkers, if you choose, and the ability to draw to this Theatre of this size affords an opportunity for a substantial gross, therefore an opportunity to pay a substantial film rental, which would be much higher than the film rental some other theatre could pay that was in a different district, for instance".

Do you remember that?

A. Yes, sir.

Q. The reason you can pay them more film rental is because you are getting a picture which is not played all over the neighborhood, isn't it?

A. It is the gross business that enables us to pay the film rental.

Q. Yes. But you have got to have a product which will draw people into your theatre, in order to do that gross business, don't you?

A. Both the product and the theatre.

Q. All right. But you can not do it without the product, can you?

Mr. Adcock: Wait a minute. The witness had not finished his answer.

The Witness: It is a combination of both, Mr. McConnell, in my opinion.

2257 Mr. McConnell: Q. All right. It is a combination of both, you say?

A. Yes, sir.

Q. Well, what proportion would you assign to each drawing power of your theatre?

A. I couldn't answer that.

Q. Have you ever had any patron call you up at the box office and want to know what kind of a cooling system you have in your theatre?

A. No. They would know.

Q. Have they ever called you up to ask you—

Mr. Adcock: Wait a minute. The witness has not finished his answer.

Mr. McConnell: He said "No". That is an answer to the question.

Mr. Adcock: Well, he was about to say something else.

Mr. McConnell: Well, he hasn't any right to make any explanation.

Mr. Adcock: Yes, he has.

The Court: All right. Let us have another question.

Mr. McConnell: Q. Have they ever called you up and asked you what picture is playing down there?

A. Yes.

Q. Have you ever had anybody call you up and
2258 ask you what art works you have on display tonight?

A. I never had anybody call me; but they may have called the particular theatre they were interested in going to.

Q. Well, do you know of any such call?

A. Our Managers report them constantly.

Q. Want to know what art objects you have, is that it?

A. No, not as to art objects. They call the Tivoli Theatre and want to know what they are playing.

Q. That is right. Do they call up and ask you what kind of seats you have in the theatre?

A. No, sir.

Q. Now, you testified if the Jackson Park shared the C week run with the Maryland and Jeffery Theatres, the Maryland would lose some business?

A. Yes.

Q. Remember that testimony?

A. Yes, sir. That is my opinion.

Q. And they would lose it because the Jackson Park had more to offer the public, with a better picture, wouldn't they?

A. That was not the reason I gave.

Q. Well, I am asking you now if that is not so?
2259 A. I don't think so.

Q. You don't think that is the reason?

A. No.

Q. Well, then, it wouldn't make any difference to them, would it, if the Jackson Park got what they are asking for?

A. It wouldn't make any difference to whom, Mr. McConnell?

Mr. McConnell: The Maryland Theatre.

A. Oh, yes.

Q. All right. What difference would it make?

A. Well, the patronage that is now available in C week to the Maryland and Jeffery would be divided between three theatres instead of two.

Q. Why?

A. Because the Jackson Park would be playing at the same time as the Maryland Theatre and Jeffery Theatre.

Q. In other words, they would have something to offer the public, wouldn't they, in the same week?

A. That is right.

Q. Yes. So that it would increase the box office of the Jackson Park if they were playing in C week, wouldn't it?

A. I wouldn't say as to what would happen.

2260 Q. You wouldn't go that far?

A. No.

Q.—But it would take it away from the Maryland?

A. And Jeffery, yes, sir.

Q. Well, where would it go?

A. Go to the Jackson Park.

Q. Well, it would increase it, then, wouldn't it, at the box office?

A. I don't know what the result would be—

Q. All right.

A. (Continuing:) —to replace the other—the present business. I don't know what would happen.

Q. You testified about a split product deal. What is a split product deal?

A. I don't recall the testimony.

Mr. Adcock: I don't recall it.

Mr. McConnell: Q. Well, do you know what a split product deal is?

A. Yes.

Q. What is it?

A. It is a deal with an individual distributor, in which part of the product is bought by one exhibitor and part by another.

Q. In other words, they are different pictures,

2261 but they are played in the same week?

A. No.

Q. They are not the same pictures playing in the same week, are they?

A. Well, the same run.

Q. The same run, but different pictures?

A. That is right.

Q. Playing under the run?

A. That is right; different run.

Q. Suppose there was a split product deal between the Jackson Park and the Maryland, what effect would that have on your Maryland admissions?

A. It would affect the Maryland admissions.

Q. Would it?

A. Yes, sir.

Q. It would take away admissions from the Maryland Theatre, would it?

A. Yes, sir.

Q. Where would they go?

A. I don't know.

Q. Would they go to the Jackson Park?

A. They might go to the Jeffery; maybe the Jackson Park.

Q. Well, the Jeffery has not changed its program; it is playing the same as it was before, isn't it?

A. Yes.

2262 Q. Under the question I put?

A. People might select it in preference to the Jackson Park. I wouldn't know that.

Q. No, but the Jackson Park is now the one that has a better program, isn't it, with the split product deal?

A. On some pictures, yes.

Q. And on those pictures—

Mr. Adcock: Now, wait a minute. All right. Better than what? The question is not intelligible.

The Witness: I assumed he meant better than they now have.

Mr. McConnell: Q. And on that basis the Jackson Park would have more to offer the public than they did before, wouldn't they?

A. Yes, sir.

Q. Now, you testified here at some length about the business district out on the south side.

What investigation did you make of this business district?

A. No particular investigation; just from contact with it over a period of years.

Q. All right. What is your contact with it over a period of years? How many times have you been out
2263 there?

A. Oh, at least once a month.

Q. Do you do any shopping out there?

A. (Continuing:) In fifteen years.

Q. Where do you live?

A. At the present time?

Q. Yes.

A. I live at 33 Bellevue down town.

Q. You don't do any shopping out there in that district, do you?

A. I have. I don't go out there to shop, but I shop because I am in the neighborhood quite frequently. Most of the—

Q. Now, the business districts you spoke of, there are no residences in the business district, are there?

A. No, not on 63rd street, that I know of.

Q. And your patrons to your theatre come from people who live in homes and apartment houses, don't they?

A. Principally apartments, in that district.

Q. From homes. They come from homes, too, don't they?

A. There aren't very many individual homes in the immediate territory of 63rd street. There are some, not many. See, they come from wherever people live.

Q. And how many theatres are in that district,
2264 that 63rd street district?

A. Well, a very rough guess would be about ten or eleven.

Q. There is only one theatre over in the 71st street district, isn't there, or the 67th street district, that is where the Jackson Park is?

A. Yes, there is only one, on Stony Island Avenue.

Q. Did you make the allocation of this volume of business down there at 63rd street, as to each theatre?

A. I didn't understand you, Mr. McConnell.

Q. Did you make any allocation of that volume of business to each theatre? Do you recall your testimony that there was a big business district there?

A. Yes, yes.

Q. All right. Did you assign all of that business that was being done there, to your Maryland Theatre?

A. No.

Q. Did you divide it up between those eleven theatres?

A. I didn't divide anything.

Q. You did not take that into consideration at all, did you?

A. That is a fact. That exists now. There would not be any change, in regard to the question you ask me.

2265 Q. Well, you did not take that into any consideration in forming your opinion?

A. No, sir.

Q. As to the drawing power of any business district?

A. No.

Q. Now, you testified, as I recall it, the Jackson Park was on the fringe of three business districts. Do you recall that testimony?

A. No. It is correct, except the three. I think I said two.

Q. Yes. And it is true?

A. Yes, sir.

Q. It is in the center of one, isn't it?

A. No. I regard it as being at the edge of both the South Shore, at 71st street, South Shore district and the Woodlawn district.

Q. How about the 67th street district? That is a business district, isn't it?

A. It is dead in proportion to the other two. I didn't think that was.

Q. You didn't think that was?

Mr. Adcock: Wait a minute. I object to the question.

The Witness: I didn't think it was important enough in appearance, in my judgment, to be called a very active one.

2266 Mr. McConnell: Q. Well, you did not consider it a business district, that is what I am trying to get at?

A. I did not.

Q. All right. How many of those stores are open at night in the 63rd Street district?

A. I don't know.

Q. That makes some difference, doesn't it, as to the drawing power of a business district to a theatre?

A. At night?

Q. Yes.

A. Some, not much.

Q. Not much. Then it really makes no great difference whether or not the stores are open or not, does it?—

A. Oh, yes.

Q. So far—

The Witness: (Interrupting:) Yes, sir. Not at night, day time.

Q. In the daytime?

A. Yes, sir.

Q. Do you think it draws patrons into your afternoon performances, is that it?

A. Yes, sir.

Q. So that what you are talking about in all that business district is the afternoon performance, is that it?

2267 A. Oh, no. I am talking about all of the business, of all day, each day, including Sunday.

Q. And at night?

A. And at night.

Q. And the business district is not open at night, or Sunday, is it?

A. Oh, there are many businesses that are open, not necessarily merchandising, entertainment businesses are open at nights.

Q. Well, you don't know how many? You did not make any research on that ground at all, did you?

A. There are ten or eleven theatres in that district.

Q. I am not talking about the theatres. I am talking about the business houses.

A. Well, what business houses are you talking about?

Q. Any business houses.

A. Well, I don't know what you are talking about, Mr. McConnell. I don't understand the question.

Q. I think you do know what I am talking about. Did you make any research?

A. No.

Q. Of how many were open at night and how many were open on Sunday?

A. I said No.

Q. All right. Now, you testified that you thought

2268 all the clearances which you got were fair. Do you remember that testimony?

A. Yes, sir.

Q. Are you giving that testimony as an expert in this case?

A. I am no expert.

Mr. McConnell: All right. I move that testimony be stricken from the record. He testified here as an expert, over Mr. Korfist's objection, that clearances were reasonable, testified as an expert. He now says he was not an expert. I ask that it go out.

Mr. Adcock: If your Honor please, he testified as to his knowledge and experience in the operation of theatres. Now, whether he testifies as an expert, he has a right to give his opinion.

The Court: It is understood that is the theory upon which his testimony went in, not as an expert, but from his years of experience—

Mr. Adcock: Certainly.

The Court: (Continuing:) —in that field of endeavor.

Mr. McConnell: Q. Well, you had an interest in that question, didn't you, as to whether it is reasonable. You are trying to maintain it is reasonable in this lawsuit, aren't you?

2269 A. Not necessarily. I honestly and sincerely believe that clearance was fair and reasonable. If I didn't think so I might want to do something about it.

Q. But you are trying to maintain it here in this lawsuit, aren't you?

A. I have no motive—

Mr. O'Brien: I object, to trying to obtain anything in this lawsuit. You are trying to obtain it. And what you are asking for in the question—

The Court: All the witness can do is testify. These lawyers maintain one way or another.

Mr. Adcock: If the Court please, he testified he is an officer in the Balaban & Katz Corporation. Manager.

The Court: I think that is the record.

Mr. Adcock: Whatever interest he has is shown in that.

Mr. McConnell: That is all.

Mr. Goldberg: Mr. McConnell, you asked for some information about the dates and the frequencies, as I understand it, of bank night and screeno in the Maryland, Tivoli and Tower Theatres. I have them here, and I can read them into the record, if you would like to have me do so. I procured them from the accounting department of Balaban & Katz Corporation.

2270 Mr. McConnell: All right; if you will.

Mr. Goldberg: At the Maryland Theatre, ban

night was started on January 21, 1936, which was a Tuesday. It was used one night a week, on Tuesday nights, and continued to use it one night a week, each week, on Tuesday nights, until and including Tuesday, December 22nd, 1936.

The Tivoli Theatre started using bank night on June 23rd, 1935, a Monday, and it was used once a week, on Mondays, from then on until December 21, 1936, also on Monday.

At the Tower Theatre bank night started on Saturday, October 5th, 1935, was used one night a week, until November 7th, 1935. Thereafter it was used twice a week, on Wednesdays and Saturdays, to and including December 23rd, 1936.

Are you also interested in the screeno information, Mr. McConnell?

Mr. McConnell: Yes.

Mr. Goldberg: The Tower Theatre commenced using screeno on February 19th, 1935, a Saturday, used it once a week, on Saturdays, until April 10th, 1935. Thereafter it used screeno twice a week until May 20th, 1935, and then
2271 screeno was used three times a week, until October 2, 1935, then twice a week until November 3rd, 1935, then once a week until December 13th, 1936, when it was discontinued.

At the Tivoli Theatre screeno was used once a week, commencing on Wednesday, May 22nd, 1935, until June 17th, 1935, at which time the Tivoli Theatre started using screeno twice a week, and that continued until November 30th, 1935. Thereafter screeno was used at that Theatre once a week, to and including December 28th, 1936.

The Maryland Theatre commenced using screeno on May 10th, 1935, used it once a week up to May 28th, 1935, at which time the Maryland Theatre commenced using screeno twice a week; that continued until January 24th, 1936. From January 24th, 1936, to December 25th, 1936, it was used once a week, and on December 25th, 1936, it was discontinued.

Mr. McConnell: There is one item here I overlooked, if the Court please. I asked for this letter. I found it now. I want to ask this witness one question about this letter.

The Court: All right.

2272 Mr. McConnell: Q. Mr. Immerman, I call your attention to a letter which is contained in a bulk exhibit, Plaintiffs' Exhibit 46, under date of December 6,

1937, and call your attention to the paragraph there in that letter, about the new theatre building. Will you refer to that? Will you read it, please,—not aloud, but to yourself. I want to ask you a question about it.

(Witness examines document.)

The Witness: I have read it, sir.

Mr. McConnell: Q. Do you see a reference there to a new theatre building?

A. Yes, sir.

Q. And you were taking clearance over that new theatre before it was built, weren't you?

A. It says here "being built."

Q. Being built.

A. It says on Milwaukee Avenue. There was no theatre being built on Milwaukee Avenue. It is reference to a theatre on—yes, I think it is, I beg pardon, I am confusing it with Lawrence Avenue.

Q. Did you go out and look at that theatre while it was being built?

A. Yes, sir.

Q. And you still took clearance over it even though 2273 it was a new theatre being built?

A. We were paying for it.

Q. Well, you still took clearance over it?

A. Yes, sir, bargained for it.

Mr. Seeley: I believe the record ought to show that it turns out that Mr. McConnell had that exhibit in his possession all the time, in view of the statement he made that Mr. Adcock did not turn it over to him.

Mr. McConnell: I did not want to imply or infer or leave any implication in this record that Mr. Adcock was not dealing completely fairly with me. He has throughout the case There has not been a single instance when he has not dealt fairly with me. I did not want that inference in the record. If it is left there, let us expunge it from everybody's mind right now.

Mr. Seeley: That is all I wanted. Thank you.

The Court: All right. Mr. Adcock has been given a clean bill of health.

Now, who wants to ask some questions of Mr. Immerman?

2274 *Redirect Examination by Mr. Adcock.*

Q. On this December 6th letter that you referred to, December 6th, 1937, to which Mr. McConnell has just referred, was that theatre on Milwaukee Avenue built?

A. Yes, sir.

Q. What size theatre was it?

A. If my memory serves me right about 900 seats to 1000 seats.

Q. And your Belpark Theatre was what size?

A. The Belpark?

Q. Yes.

A. It has about 2000 seats.

Q. And the Gateway?

A. About 2000.

Q. And do you know what playing position the new theatre on Milwaukee Avenue has played since it was built?

A. I believe second week.

Q. In the course of your examination you were asked certain questions referring to certain matters. I would like to discuss some of them with you.

You were asked about B. & K. Paramount Exhibit 3, which was offered and received in evidence, and as
2274½ I understand it, you have visited the Jackson Park on occasions, also the theatres photographs of which are in that Exhibit 3. Is that correct?

A. Yes, sir.

Q. Are the photographic—does that exhibit show correct or reasonably correct photographic representations of different views of the theatres that are contained in that exhibit?

A. Yes, sir.

Q. You were asked about freezing units, page 1740 of the record, it appears, and what you knew about them in connection with cooling the atmosphere in theatres, I believe?

A. Yes, sir.

Q. And, among other things, you were asked or testified about the freezing units which use carbon dioxide or Freon. Do you remember that?

A. Yes, sir.

Q. Have you any opinion as to the effect of the opera-

tion of those sorts of units in connection with the cooling of air and conditioning of air in theatres, as compared with the freezing units which consist of blowing air over ice, natural ice?

A. Yes. The—

2275 Mr. McConnell: Just a minute.

Mr. Adcock: If you have, will you give your opinion?

Mr. McConnell: I object to his opinion as not proper redirect. He was asked about Freon and CO 2 in the operation of the defendants' theatres. Now, he is going into a comparison between one system and another.

Mr. Adcock: The purpose of the examination, I take it, was with respect to the use of such units and the operation of theatres.

The Court: Well, the objection is overruled. He may answer the question.

The Witness: The installation of the CO 2 carbon dioxide plant or dichlormethane plant, or Freon, you have in conjunction with it a definite control of the humidity in the air, and can control it,—the Freon plant probably more efficiently than the CO 2 plant. The humidity in the air is the factor that definitely gives you the feel of warmth and cold, warm and cold. In addition to temperature it probably is a more important factor than the actual temperature of the air. We try to extract as much humidity as we can with those two types of equipment; whereas blowing the air over ice, the ice melts and so absorbs the moisture and carries it on into the room that is being

2276 served.

Q. How do those system of cooling air using the mechanical methods that you have mentioned compare with the cooling which is accomplished by washing the air with the water from the hydrant without any cooling unit added?

A. Washing the air with water of specific temperatures, whether it is from a hydrant or any other. If the temperature is favorable to the result desired, it is very effective. It depends entirely upon the temperature of the air and the water

Q. Well, have you had any experience in the operation of a unit or a method which merely used the water from the hydrant without any cooling of the air or control of the temperature of the water?

A. Yes, sir.

Q. What has been the effect of the use of such method?

A. The effect is good providing the temperature of the water and the air is favorable, excepting that the net result would give you a higher humidity than the other systems.

Q. Does that system keep the air at an even degree of coolness?

2277 A. Well, under certain conditions. The temperature of lake water is around,—at times, of course, it is very cold and then it maintains a temperature of around 50 to 52 degrees until up to maybe June, sometimes later than that, some times the bathing beaches in the summer time are not open early for the reason that the water is too cold. As long as that water is cool enough, I would say less than 53 or 54 degrees, it can be used effectively for cooling air, providing the air you are cooling is not already too moist or too hot. If the air is very warm it absorbs much more of the moisture, and if it is not, it absorbs much less. It is strictly chemical.

Mr. Adcock: Q. You were asked about the negotiations that you had, I believe it was with Fox, with respect to the film, that is the purchase of film or the license of pictures for exhibition in your theatres, and the clearance agreements that were entered into in connection with those; is that right?

A. Yes, sir.

Q. And also, I believe, the clearance agreements that were entered into with other distributors?

A. Yes.

2278 Q. And you also testified, as I believe, that the clearance over other theatres and the runs that you asked for in connection with those contracts was something that was requested by Balaban & Katz; is that correct?

A. Yes, sir.

Q. And that when you reached an understanding in your negotiations the contracts were drawn and the contracts were drawn by the distributor, the individual distributors with whom you dealt. Is that correct?

A. Yes, sir.

Q. Do you remember whether, at any time about the year 1937, you submitted a form of clearance agreement in connection with your contracts to the different distributors?

A. Referring to the paper that I saw here yesterday?

Mr. Adcock: Yes.

A. —that I did not know you asked about the language of. I checked that last night to see what happened and what that was. I find that about that time, which was in '37, I don't recall the exact time, '37, I think, I think our attorneys prepared a form for us to present to the dis-
2279 tributor that we were negotiating with. Some of them accepted it and some of them did not. I think this happens to be one of the companies that accepted our form.

Q. Do you remember a conference with me and Mr. Goldberg, Mr. John Balaban, and I think Mr. Kaufman, in the early part of October, 1937, with respect to the form of clearance schedules?

A. Yes.

Q. Do you remember whether we prepared a form that you asked us to prepare with reference to submitting—that you said you wanted to submit to distributors?

A. Yes, sir.

Q. Did you submit such a form?

A. Yes, sir.

Q. At the time you testified yesterday you did not recall that situation, is that correct?

A. I did not recognize it.

Q. At record page 1726 I find a statement in answer to the question by Mr. McConnell with reference to minimum admission price, that you stated, "We are required to charge the minimum admission price." Did you understand that you could not charge more than the admission price?

A. No, sir.

2280 Q. You did not intend to give an impression that you could not charge more?

A. No, sir.

Q. As a matter of fact, in your Maryland Theatre during the last several years you have charged more than the minimum admission price in the contracts, isn't that correct?

A. Yes, sir.

Q. And that is true of other theatres, I take it?

A. Yes, sir.

Q. At record page 1727, Mr. McConnell read to you a provision, I believe, of the Fox contract with respect to

certain things that distributor might do in the event B.&K. did charge less than the minimum admission price. Do you know whether the provision which you read was contained—that was in a printed form of contract, was it not?

A. I did not read it.

Q. Well, do you know whether it was contained in a printed form?

A. I think it was.

Q. And such similar provisions with regard to which you testified were also contained in other distributor contracts, is that correct?

2281 A. Yes, sir.

Q. Well, do you know whether the language of the contract that was read by Mr. McConnell was contained in exactly that, in the other contracts?

A. I do not know that.

Q. And you did not wish to be understood as so testifying?

A. No, sir.

Q. You were asked whether Bank Nite drew patrons. Just what did you mean by that Bank Nite policy?

A. I said yes.

Q. You remember how Bank Nite operated, do you not?

A. Yes, I do.

Q. Were there admission tickets bought where the purchaser never attended the theatre, do you know?

A. There were two ways. In the beginning, it was necessary, in order to participate in the drawing, to be in attendance at the theatre at the time, respond in three minutes or something like that and you get the money, and that brought such terrific traffic congestion at the larger theatres that the plan was changed to one where it would not be necessary for you to be there.

So it developed to be a game that was played just 2282 like you play a gambling game of any kind. I know I did it myself on several occasions with friends—not myself, because I was an employee and was not permitted to participate, but they would take eight or ten dollars and drive around the city and play all the theatres that were playing Bank Nite that week; probably spend eight or ten dollars and have the possible chance of winning

three or four thousand dollars or maybe five thousand dollars.

That was the game of Bank Nite.

Mr. Adcock: Q. And that was one way the grosses were increased, is that correct?

A. Yes. People did not have to attend the theatre; Some theatres had the box office open at five o'clock in the morning, for the milk men. No show on the screen at all,—just Bank Nite matinee.

Q. You were asked to state when double features started in 1936 by various B.&K. theatres, and, in answer to the questions, you stated simply from memory as I recollect it. Is that correct?

A. Regarding the starting time of double features in some of the theatres?

Q. Yes.

A. I don't recall whether I had the chart or not,
2283 but it is on there.

Q. Do you know whether or not the chart does give the dates when double features were started in B.&K. Theatres in 1936?

A. It should.

Q. Well, will you look?

A. Yes. Any specific theatre or—

Mr. Adcock: No.

The Witness: The chart indicates the double feature starting time.

Mr. Adcock: Q. On the different theatres?

A. Yes, sir.

Q. And you understand that the chart states the fact?

A. Yes, sir.

Q. And that is Plaintiffs' Exhibit 45, I believe.

A. It is Exhibit 45.

Q. You were also asked about when various theatres played double features or the dates in 1930, '31 and '32. Do you remember being asked about that?

A. Yes, sir.

Q. And the chart also, Plaintiffs' Exhibit 45 also shows that data, does it not?

A. Yes, sir.

2284 Q. You were asked about certain theatres located in the 63rd Street district. As I understand it, there is the Tivoli Theatre, which plays in A week, is that correct?

A. Yes, sir.

Q. And that is the next run after the Loop, the next showing of a picture after the Loop?

A. Yes, sir.

Q. Then there is the Tower Theatre, which plays in B week?

A. Yes.

Q. That is the next run?

A. Yes, sir.

Q. Then there is the Maryland Theatre, which plays in C week as the next run?

A. Yes, sir.

Q. Then there is the Lex Theatre on 63rd Street, which plays in first week of general release?

A. Yes, sir.

Q. There is the Kimbark and new Woodlawn, perhaps some other theatres that play in second week of general release, or maybe some later runs; is that correct?

A. Yes, sir.

2285 Q. Does the fact that there are a variety or number of theatres playing in different runs, different sized theatres located on 63rd Street, have any effect, in your opinion, in drawing people to that district on 63rd Street for the purpose of amusement?

A. Yes, sir.

The Court: Let us take a recess for ten minutes.

(A recess was accordingly taken, after which the following further proceedings were had;)

Mr. Adcock: Q. You were asked on cross-examination with regard to the effect of Bank Nite upon gross receipts, that is, gross admissions of your theatres—of the Balaban & Katz Theatres, is that correct?

A. Yes, sir.

Q. And I believe theatres generally. Did you ask the accounting department of Balaban & Katz to prepare any data on that subject?

A. I did.

Mr. Adcock: I have here what came from the accounting department, the gross admissions for the Tivoli Theatre, covering the years from 1933 to 1943. Will you mark it, please, B.&K. Paramount Exhibit 10.

(Document marked B.&K. Paramount Exhibit 10 for identification.)

2286 The Court: What is the question of this witness? Is there a question pending?

Mr. Adcock: Yes.

Q. Will you read the gross admissions covering the years shown there, which I believe are the years 1933 to 1943?

A. 1933	$407,683
1934	418,150
1935	422,962
1936	541,180
1937	490,640
1938	426,289
1939	434,822
1940	475,312
1941	475,961
1942	518,805
1943	557,371.

Mr. Adcock: Q. Do you know what date the Tivoli started playing Bank Nite? I don't think it is shown on Exhibit 45.

A. I would not know without referring to the record.

Mr. Adcock: I think it was read into the record, your Honor, so I don't think that it is necessary.

2287 The Court: Well, if you have it there tell it to him. Let's get on with this lawsuit.

Mr. Goldberg: The record, as read into the evidence before, indicates that the Tivoli used Bank Nite from June 23, 1935 to December 21, 1936.

Mr. Adcock: Have you similar data prepared with reference to the Tower Theatre?

The Witness: A. Yes, sir.

Mr. Adcock: Will you read that into the record?

2288 Mr. McConnell: I don't want anything else in the record, your Honor, but I think I ought to have opportunity to see where he got this data. He is just reading a lot of figures in the record, and I don't know where they came from.

The Court: If you don't know where they came from, I am sure I don't.

Mr. Adcock: He asked to have them prepared in the accounting department of Balaban & Katz.

The Court: That is the answer to it. If you say they were prepared in the accounting department of Balaban & Katz, that is the answer to the inquiry.

Mr. McConnell: I can't cross-examine this witness as to the figures. I don't have—

The Court: You have the good faith of Mr. Adcock. If you are not satisfied with that, we will have to bring the books in or give you opportunity to examine the books.

Mr. McConnell: I think I have that right, your Honor.

The Court: If you want that right, you will be accorded the right to see the books.

Mr. Adcock: I ask that they be identified as 2289 Balaban & Katz-Paramount Exhibit 11.

The Court: If you have them identified, we can finish with this evidence.

Mr. O'Brien: It will take weeks to look at the books. We have all compared those figures.

Mr. McConnell: I brought similar data and was compelled to produce the books and identify them. I have a right to see the books and see what this comes from.

The Court: Do you have documents of a similar nature?

Mr. Adcock: Yes.

The Court: Why not identify all of it, and then Mr. McConnell can look at the books in the meantime.

Mr. Adcock: That is the Tower. I also want to identify this document, which is a graph and shows the trend of the Tower Theatre. I ask that it be marked Balaban & Katz-Paramount Exhibit 12 for identification.

(Said document so marked by reporter.)

Mr. Adcock: Then I have documents with reference to the Maryland Theatre. The Maryland grosses are in evidence. I don't need to offer anything with reference 2290 to that. They were obtained and given in the same way that these are being given.

I ask that this graph be marked Balaban & Katz-Paramount Exhibit 13 for identification.

(Said document was so marked by reporter.)

Mr. Adcock: Q. I will now ask you whether this document was prepared by the accounting department,—which has been marked Balaban & Katz-Paramount Exhibit 13 for identification.

The Witness: A. This was prepared by the accounting department.

Q. What does that document purport to show?

A. It shows the curve of the gross receipts for the period 1933 to 1942, inclusive, both inclusive.

Q. Of the Maryland Theatre?

A. Of the Maryland Theatre.

Q. Covering what years?

A. The years from 1933 to 1942. It likewise shows the film rental paid, by the graph of the same period.

Q. Does that graph truly reflect the admissions, the number of the admissions for those years, from the
2291 document that was offered in evidence by the plaintiffs in this case?

A. Yes, sir.

Q. It contains the gross receipts of the Maryland for certain years?

A. Yes, sir.

Mr. Adcock: I offer that in evidence.

The Court: Any objection?

Mr. McConnell: Just one question.

Q. Did you prepare the graph?

A. No, sir.

Mr. McConnell: I object to it.

The Court: The objection is sustained.

Mr. Adcock: If your Honor please, he stated it is merely a picture—

The Court: I understand he said he cannot testify as to his personal knowledge, that it was prepared by somebody else.

Mr. Adcock: Q. Was this prepared under your direction?

A. Yes, sir.

The Court: Q. It was prepared under your direction?

A. Yes, sir. I ordered it prepared.

2292 The Court: Are you familiar with the entries from which it was prepared in your accounting department?

A. Yes, sir.

The Court: Then it may be admitted.

(Whereupon the said document so offered was marked and received in evidence as Balaban & Katz-Paramount EXHIBIT 13, and is in words and figures, as follows, to-wit:)

2293 Mr. Adcock: I ask that this document be marked Balaban & Katz-Paramount Exhibit 14 for identification.

(Said document so marked by the reporter.)

Q. I show you another document which has been marked Balaban & Katz-Paramount Exhibit 14 for identification.

and ask you to state whether or not that document was prepared under your direction?

A. Yes, sir.

Q. What does that document purport to show?

A. It shows the admissions of the Jackson Park Theatre by curve for the years 1933 to 1942, and film rentals paid for the same period.

Q. Do you know from what data that was prepared?

A. From the records given to me by you, which I, in turn, turned over to the accounting department.

Q. It shows the admissions, gross admissions, of the Jackson Park, and the film rental of the Jackson Park for that period?

A. Yes, sir.

Mr. Adcock: And those are in evidence, your
2294 Honor, the admissions of the Jackson Park for that period, for those years. The admissions and the film rental is shown there.

The Court: Any objection to that exhibit?

Mr. McConnell: No objection.

The Court: All right. It may be received.

(Whereupon the said document so offered was marked and received in evidence as Balaban & Katz-Paramount EXHIBIT 14, and is in words and figures as follows, to-wit:)

2295 Mr. Adcock: That is all.

The Court: Mr. O'Brien?

Mr. O'Brien: I have just a question, your Honor.

Examination by Mr. O'Brien.

Q. Mr. Immerman, you have told us a lot about the air conditioning system. There is something I want to find out about that for myself.

Was there a time when you had the mushroom affairs under the seats, through which cold air would come?

A. Yes, sir.

The Court: They have one of those here in the court room.

Mr. O'Brien: Yes, your Honor, I know.

Q. You say the public does not call to inquire as to what kind of air conditioning unit you have, is that right?

A. Yes, sir.

Q. But if that conditioning unit goes out of kilter and

the customers begin to get chilblains, they talk to the ushers or otherwise call it to your attention, do they not?

2296 A. They call us.

Q. Or if some patrons get runs in their Nylons from the seats, they tell you about that, do they not?

A. Yes, sir.

Mr. O'Brien: That is all.

The Court: Mr. Seeley?

Mr. Seeley: No question.

Mr. McConnell: I want to find out more about this air conditioning myself.

Recross Examination by Mr. McConnell.

Q. As I understand your testimony this morning, it is to the effect that the air passing over water, picks up moisture, is that it?

A. Yes, sir.

Q. Did I understand you correctly when you first described your system at Balaban & Katz, to say that the air passes over water under that system?

A. I said yes to your question that air passes over water. It does not pass over water,—over ice.

Q. Wait. I am talking about your system.

2297 A. We don't pass over water. That is the answer.

Q. What do you pass it over?

A We don't pass it over anything. We pass it through a fine spray of water.

A. Yes, sir.

Q. So the cooling system, part of it, only has to do with the temperature of the water, is that it?

A. It is a very important factor.

Q. Will you answer my question?

A. Not entirely, no.

Q. Where does the cooling part of the unit operate? On the water?

A. Where does the cooling part operate?

The Court: What makes the air cool?

A. The water.

Mr. McConnell: The water?

A. That is right.

Q. What cools the water?

A. Expansion of gas.

Q. Pipes over which the water passes, isn't that it?

2298 A. Pipes and expansion of gas.

Q. The water is cooled and is sprayed over the air?

A. Yes, sir, in the case of CO^2. In the case of Freon, it is different.

Q. Well, let's take the CO^2 and finish with the CO^2 first. In CO^2, your water is cooled, and the cool water is spread through the air, and the air is then cooled, is that right?

A. That is right.

Q. So the air has the same opportunity of picking up moisture when it is sprayed on, as any other?

A. No. There is variation on the part of the air to absorb moisture, the temperature of the air.

Q. Is it your understanding—

Mr. Adcock: Wait. The witness was continuing to answer when you interrupted him.

The Court: Have you finished your answer?

The Witness: A. I was going to say that the temperature of the air and temperature of the water are important factors as to what happens.

Mr. McConnell: Q. Well, the temperature of the

2299 air is being cooled by water, as I understand it, is that right?

A. I mean before the cooling process. During the cooling, the effect at the end varies, with the beginning.

Q. The air is cooled by a spray of water, is that right?

A. That is right.

Q. Well, do you understand that the Jackson Park Theatre does not spray the air with water?

A. I don't know what the Jackson Park Theatre does.

Q. Then what do you base your conclusion on, if you don't know the system of the Jackson Park?

A. I did not say anything about the Jackson Park Theatre.

Mr. McConnell: All right. That is all.

The Court: Is every one finished with this witness?

Mr. Adcock: I think that is all, your Honor.

The Court: I think that is the conclusion, Mr. Immerman. Who is the next witness? Step down, please.

(Witness excused.)

2300 The Court: You have a Mr. Goodman here. Do you want to cross-examine him now?

Mr. McConnell: I might as well, I guess.

RALPH LEE GOODMAN, a witness produced on behalf of Balaban & Katz Corporation and Paramount Pictures, Inc., having been previously sworn, resumed the stand and testified further as follows:

Cross-Examination by Mr. McConnell.

The Court: I guess he is presented for cross-examination. He has been sworn.

Mr. McConnell: Q. You have testified here as an expert, I understand?

A. I don't know what an expert is.

Q. You don't know what an expert is? You mean that literally?

A. Yes.

Q. Do you have some particular qualification, on the basis of which you expressed opinions with reference to the issues in this lawsuit?

A. I have.

2301 Q. And along what particular phase or line are your particular qualifications?

A. I serve many organizations in Chicago as consultant in their selection of locations for retail businesses. I also engage in a business which serves as consultants to retail stores and manufacturers in the selection of markets within Chicago, where they may advertise their product most profitably.

Q. That is your particular—

A. I also engage in research work, making studies of facts and data, and distributing advertising material through one of my organizations, from home to home by carriers.

Q. Throw-aways, you call that, don't you?

A. No, I don't call it that.

Q. What do you call it?

A. Advertising.

Q. Now, what particular field or phase do you consider yourself most and best qualified for?

A. I have been in several fields that I have outlined here, for eighteen years.

Q. Have you been in all of them the same length of time?

2302 A. That is right.

Q. And what allocation of time do you make as between those different fields?

A. I am now spending most of my time here. It all depends on what comes up.

Q. You cannot allocate, then, the time—

A. No.

Q. (Continuing.) —which you spend in different fields?

A. No. I am constantly interested in all of them.

Q. Do you have some business which you run?

A. Yes.

Q. What is the name of it?

A. Big Four Advertising Carriers, Advertising Distributors of America. I am resident manager of Fact Finders Associates, a national research organization with offices in New York.

Q. Who is associated with you in that business?

A. It is a corporation.

Q. Well, are you the president of it?

A. I am general manager of the Big Four Advertising Carriers, and am chairman of the Board of the Advertising Distributors of America, which operates 2303 nationally in the same field.

Q. Where are the main offices located?

A. 20 East 8th Street, Chicago.

Q. Have you been employed by the defendants in this case?

A. I have.

Q. When were you so employed?

A. I don't know the date. It must be about seven or eight weeks ago.

Q. Who employed you?

A. The defendants, Mr. Adcock, Mr. Goldberg, and Mr. Seeley.

Q. Have you ever worked for the defendants before?

A. No, but I have been in the service of one of the defendants, in the course of my business delivering advertising material.

Q. Which one?

A. Balaban & Katz. That is, not that I have been in their employ, but our organization has enjoyed their business.

Q. And still do enjoy their business, is that right?

A. No. We have not had any for several years.

Q. You would like to have some more, though, wouldn't you?

A. Not now. We don't have enough men to han-
2304 dle the business we have. We have been turning down more than we perform.

Q. But you have time to undertake this research?

A. That is my business.

Q. The other is your business, too, isn't it?

A. That is right.

Q. Are you being paid for your time here in court?

A. I am.

Q. What rate of pay are you charging?

A. I have agreed with the defendants to present my time in total, and to agree with them on a fair rate, after the case has been adjudicated.

Q. Are you to receive more if they win this lawsuit?

A. No.

Q. Are you sure of that?

A. I would not ask for more.

Q. Now, what research did you do in this matter?

A. I first made a research to see whether or not I wanted to serve the defendants; and after that, I consulted the public record of facts regarding the amount of retail business done in each of the locations of the theatres
2305 involved in this hearing.

I determined the number of stores in these locations, these general business locations. I determined the kind of stores, and the amount of business done in each of the locations.

I went through the locations personally and got a general impression of the kind of stores, the character and quality of the appointments in the stores.

I visited the theatres involved in this location, and got my own impressions of them. I determined the size of the theatres from information furnished me by the defendants. I determined the seating capacity from information obtained through the License Bureau.

I then related all of the facts, prepared a map and exhibit and reached my conclusions.

Q. You reached your conclusions before you prepared your map, didn't you?

A. I said I,—yes, about the same time, after I prepared the data.

Q. Well, you had to reach your conclusions before you prepared the map, didn't you?

2306 A. Oh, no, no. You reach your conclusion after you have all the facts before you.

Q. But you were doing more than getting the facts before you, when you were putting them together on the map, weren't you?

A. The map is an exhibit with my conclusion.

Q. You are trying to prove something by that map, aren't you, trying to present something, trying to prove it?

A. Trying to present facts.

Q. From your point of view, is that right?

A. That is right.

Q. To substantiate some conclusion which you have in your mind?

A. I am trying to present my facts in that manner.

Q. Do you prepare advertising copy?

A. I do not.

Q. Do you have anybody in your organization that does?

A. We do not.

Q. Who prepares these throw-aways or hand-outs?

A. Our clients.

Q. You just deliver them?

A. That is right.

2307 Q. That does not take much of an organization, does it? You just hire boys to deliver them?

A. We hire men affiliated with the American Federation of Labor. That is a scientific business.

Q. I have no doubt it is.

A. It requires knowledge of density of population, the number of people in each home, and supervision to see that they are all reached.

Q. Now, in these business districts that you made this survey of, you did not find many residents in these business districts, did you?

A. I did not look for any. There is very little in any business district.

Q. Did you make any count as to how many there were?

A. No.

Q. You ignored that feature?

A. That is right. I did not consider it important.

Q. I did not ask you that!

A. I did not ignore it, but I did not consider it important.

Mr. McConnell: I ask that the witness's volunteered remark go out.

Mr. O'Brien: I submit that he—

2308 The Court: Well, he made the same answer twice. The second answer can go out.

Mr. McConnell: Q. Did you determine how many of those stores were open after 6:00 o'clock at night?

A. I did not.

Q. Did you determine how many were open on Sundays?

A. I did not.

Q. How many business districts did you show?

A. Did I what, sir?

Q. How many business districts did you show on the map?

A. I don't know exactly the number. I showed a number,—all of the business districts within the area from 35th Street to 91st Street, from Western to the irregular line of the Lake on the east.

Q. Does it show the business district in the neighborhood of the Jackson Park Theatre?

A. Yes, sure.

Q. What was the volume of business done there?

A. The district on Stony Island Avenue from 67th Street to 71st Street is designated in Table 7 of this

2309 geographic map, is the business district we made of the volume of two million four hundred and seventy some odd thousands.

Q. Two million four hundred and seventy some odd thousands, is that right?

A. May I check that, please? $2,467,000.

Q. How many theatres did you find in that business district?

A. The Jackson Park Theatre.

Q. Just one?

A. That is right.

Q. What was the volume of business down on 63rd Street that you were talking about?

A. The business district on 63rd Street, as defined in this study from which I took my data—

Q. Let's go to this study from which you took your data. What is this study?

A. A study of the retail business of Chicago, which was published in 1939 by the United States Department of Commerce, from data in the Census of Business in 1935.

Q. Who prepared it, this Census of Business?

A. The United States Department of Commerce, Bureau of the Census.

Q. Go ahead.

A. This business district runs from 63rd Street,—
2310 the data as furnished, rather,—from 511 to 1100 East; from Cottage Grove Avenue, from 6000 to 6500, $9,292,000; containing on the same 63rd Street, from 63rd Street, 1200 East to Stony Island 1500, inclusive, $3,070,000. The total is $12,362,000.

Q. For all of 63rd Street?

A. That is right.

Q. How many theatres are there on 63rd Street?

A. My memory does not serve me. The exhibit shows about nine or ten, I believe.

Q. What was the other district you had?

A. The district of the Grove Theatre on 75th Street, from 600 to 700 East, and Cottage Grove Avenue from 7400 to 7600, a total volume of $2,905,000. You want that information?

The other district was the Shore Theatre—

Q. Wait. How many theatres were in that district?

A. I have made no notes on that. I am depending on the exhibit for that information, if I may refer to it.

Mr. Goldberg: Suppose we bring it down?

Mr. McConnell: Why not let Mohammed go to the mountain? Can't the witness go to the exhibit?

2311 The Witness: I will be glad to.

Mr. O'Brien: He can't follow anything over there.

(Whereupon the witness leaves the stand and goes to the exhibit.)

The Witness: You asked about the location of the Grove Theatre?

Mr. McConnell: Q. Yes. How many theatres are there?

A. One.

Q. How about the Rhodes?

A. That is south in another location on 79th Street.

Q. How far west?

A. About three blocks south and about three blocks west.

Q. That is clear out of the district, according to you, is that right?

A. Out of what district?

Q. Out of the business district.

A. It is out of the location of the Grove Theatre. It is six blocks from—

Q. I am talking about the district in which you said there was $2,905,000 of business.

A. Yes. That is independent of that.

Q. It is clear out of that district, is it?

2312 A. It is out of it. It is not in it.

Q. How far out is it?

A. It is three blocks south and three blocks west.

Q. Of what?

A. Of the business district of 75th Street and Cottage Grove Avenue.

Q. Where do you end that business district?

A. That district runs from 600 to 700 East on 75th Street and from 7400 to 7600 on Cottage Grove.

Q. All right. Now, from what point are you taking this three blocks east and three blocks south?

A. From the extreme end of the point; from 7600 to 7900 is three blocks.

Q. What other business district have you?

A. The location of the Shore Theatre at 75th Street from 2400 East to 2600 East.

Q. How many theatres are there there?

A. Two, the Shore and the Ray.

Q. All right. You may go back on the witness stand now.

(Witness resumes stand.)

2313 Q. Did you make any checks of the patrons of these theatres to see where they actually lived?

A. I did not.

Q. Where you testified as to your impressions, those were your own personal impressions, weren't they?

A. Yes. Impressions about what?

Q. Impressions about anything,—impressions. You said you had certain impressions.

A. All impressions are personal.

Q. That is what I want to bring out. Have you ever operated a theatre?

A. I have not.

Q. Did you ever work for any theatre except the one you mentioned here?

A. No. I did not work for them. I did business with them.

Q. You were in a different capacity than just somebody who workers for them, is that it?

A. As a business man taking business from them. I was not employed by them nor subject to their direction.

Q. You performed services for them and received a remuneration for it, didn't you?

2314 A. In accordance with our rates.

Q. What owners of stores did you interview?

A. None.

Q. What stores did you go into?

A. I made no note of the stores I went into. I went into very few. I looked into a number of them.

Q. You looked at them from the street?

A. That is right, and looked at them from the outside.

Q. Did any one from the defendants or representing the defendants, tell you what they wanted to prove by your testimony?

A. No.

Q. Where did you find out about the issues in this case?

A. From the defendants.

Mr. McConnell: That is all.

Mr. Goldberg: I have just a question, your Honor.

The Court: All right.

2315 *Redirect Examination by Mr. Goldberg.*

Q. Mr. Goodman, is it your understanding that you are to be compensated when you have concluded your work, or when the case has been adjudicated?

A. When I conclude my work. I presume I won't get paid until you get through with the lawsuit.

Mr. Goldberg: One other thing, if the Court please. At the conclusion of the direct examination of Mr. Goodman, I offered in evidence Balaban & Katz-Paramount Exhibits 4, 4-A, and 4-B, and this chart now before the witness as Exhibit 5, the research book from which that was taken. Mr. McConnell was not present and your Honor suggested that you withhold the ruling until Mr. McConnell's return. I now renew my offer.

The Court: Any objection?
Mr. McConnell: No objection.
The Court: It may be admitted.
(Whereupon the said document so offered was marked and received in evidence as BALABAN & KATZ-PARAMOUNT EXHIBITS 4, 4-A, 4-B and 5 and are in words and figures, as follows, to-wit:)

2316 The Court: I understand that neither Mr. Seeley nor Mr. O'Brien has any question?
Mr. Seeley: That is right, your Honor.
Mr. O'Brien: That is right.
The Court: All right.
(Witness excused.)
The Court: We will adjourn until 2:00 o'clock.

(Whereupon a recess was taken to 2:00 o'clock p. m. of the same day, Thursday, March 2, 1944.)

2317 IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption) * *

Before Igoe, J. and J.

Thursday, March 2, 1944,
2 o'clock p. m.

Court met pursuant to noon recess.

Present:

Mr. McConnell, Mr. Korfist.

Mr. Adcock, Mr. Goldberg, Mr. Seeley, Mr. O'Brien.

Mr. Seeley: I will call Mr. Shirley. I am calling this witness for Loew's.

2318 SAMUEL SHIRLEY, called as a witness on behalf of defendant Loew's Incorporated, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Seeley.

Q. Will you state your name, please?
A. Samuel Shirley.
Q. Where do you live, Mr. Shirley?

A. Belmont Hotel, Chicago.

Q. By whom are you employed?

A. Loew's Incorporated.

Q. How long have you been employed by Loew's or its predecessor corporations?

A. Since 1917.

Q. Will you sketch briefly the various positions and responsibilities which you have had during that employment?

A. I have been district manager for the Midwest territory during all that period.

Q. Does that territory include the City of Chicago?

A. It does.

Q. Was there any time between 1917 and the present when you were not active?

A. From 1938 to 1941.

2319 Q. You were ill and not active at that time, is that correct?

A. That is right.

Q. What experience did you have in the film business or in any other business before 1917?

A. I entered the film business in 1908. Prior to that time I was in the wholesale talking machine business.

Q. And by whom were you employed between 1908 and 1917?

A. Pittsburgh Calcium Light & Film Company, from 1908 to 1910; General Film Company from 1910 to 1917.

Q. As district manager, what, approximately, was the territory over which you had supervision?

A. From 1917 to 1924 I had charge of the territories of Minneapolis, Milwaukee, Chicago, Indianapolis, St. Louis, Omaha and Des Moines.

Q. And after that what was the territory?

A. In 1924 it was comprised of Minneapolis, Milwaukee, Chicago, Indianapolis.

Q. And has it remained substantially the same?

A. No. When I came back into active duty again as district manager I had Milwaukee, Minneapolis, Chi-

2320 cago. Subsequent to that I have taken over Omaha and Des Moines again.

Q. And does Loew's have a Chicago exchange territory which it serves out of Chicago?

A. They do.

Q. Who have been, in recent years, the branch managers of the Chicago exchange territory?

A. From about 1924 until '38, Felix Mendelson was branch manager. From '38 till the present time Walter Banford was branch manager.

Q. Under the branch manager are there salesmen?

A. There are.

Q. Do you have general supervision of the licensing of films to all theatres in the city of Chicago?

A. I do.

Q. Are you in a general way familiar with the way Metro Pictures are sold in Chicago?

A. I am.

Q. What, if anything, do you, as district manager, do before a given group of pictures is offered for licensing, in the way of setting up the manner in which they will be offered?

A. I go over the list of theatres, the territory, analyze it, as best I can as to what its potential return should
2321 be to us in the way of film rentals, and, in conjunction with the branch managers, salesmen, I help to set the terms and conditions under which we sell the pictures.

Q. There has been introduced in evidence here as Plaintiffs' Exhibit 46, a five-year franchise between your company and Balaban & Katz, dated September 1, 1936. Did you take an active part in the negotiation of that franchise?

A. I did.

Q. And, included in the franchise, is a schedule of runs and clearances applying to the Balaban & Katz Theatres therein described. Did you personally negotiate that clearance schedule?

A. The clearance schedule was simply carried over from the previous year.

Q. I see. That is, it embodied the same runs and playing positions in which Loew's had sold Balaban & Katz prior to 1936, is that right?

A. That's right.

Q. In the process of your negotiations of that franchise, did you have any communications of any kind whatever with other film distributors?

A. I did not.

2322 Q. So far as you know, did anyone connected with Loew's have any such communications?

A. So far as I know, they did not.

Q. Do you know of any common agreement, understand-

ing, plan or design entered into between Loew's and any other distributor with respect to the terms of that franchise?

A. I do not.

Q. Prior to that franchise did Loew's have any other franchises in effect over periods of years between it and Balaban & Katz?

A. They did.

Q. Dating back to what time?

A. The first one was in 1925.

Q. And was there one franchise or another constantly in effect from that time until 1936?

A. There was.

Q. Since the expiration of the 1936 franchise in 1941, in what manner has your company negotiated the licensing of its pictures to Balaban & Katz?

A. For what we term the 1942-43 season we sold them in groups of not more than five, in compliance with the consent decree.

Mr. Seeley: Well, I don't think we are interested
2323 in any later period than that here.

Q. That takes you up into 1943, does it?

A. It takes you up to what we call the beginning of what we call the 1943-44 season.

Q. Have you personally been instrumental in negotiating film deals with any other exhibitors here in Chicago?

A. Well, from the very beginning I have.

Q. Well, I did not mean to make the question so broad. I mean in recent years.

A. In a general way I have supervised and been consulted with and have negotiated for some few accounts.

Q. Have these various film deals negotiated between your company and the Jackson Park Theatre passed across your desk?

A. They have.

Q. Has it ever been brought to your attention by anyone that the Jackson Park Theatre or the operators of that theatre wanted a different playing position than the one in which they have been playing?

A. Not that I remember.

Q. Do you recall at or about the time that the
2324 Granada and the Marbro Theatres were opened, which would have been 1926 and '27, receiving any inquiries

on behalf of the Marx Brothers about the possibility of licensing Metro Pictures to play in those theatres?

A. In a vague way I have in mind that somebody talked to me about the product for those theatres.

Q. Are you able to state whether, in answer to any such inquiry, you told Mr. Leo B. Salkin, or any other representative of the Marx Brothers, that you had discussed the matter with Balaban & Katz and could not sell them pictures?

A. I don't remember any such conversation.

Q. Do you recall making any statement which was like that in substance?

A. I do not.

Q. Did you at that time, that is in 1926 and '27, have a franchise with Balaban & Katz?

A. We did—with Publix Theatres, which control Balaban & Katz.

Q. Now, then, in what type of motion picture theatres does your company attempt to license the first runs of its pictures here in Chicago?

A. In the best theatres where we can get the most
2325 revenue.

Q. Well, what characteristics would make a theatre the best from the revenue standpoint?

A. The location, capacity, management.

Q. Have you an opinion, based upon your experience as to whether or not, in the Chicago Loop, the theatres operated by Balaban & Katz are the best from the standpoints which you have named?

A. They are among the best.

Q. Has it been the practice of your company, in licensing those theatres, to play first run in Chicago, to grant them exclusiveness of run and clearance over all other exhibitions of the same pictures?

A. It has been our practice to allow them a run prior to any other run in Cook County and certain parts of Illinois.

Q. What has been the purpose of Loew's in granting that exclusiveness to these prior runs?

A. To protect our revenue.

Q. And then, after licensing a first run, has it been the practice of Loew's to license second, third, and subsequent runs throughout the city?

A. It has.

Q. Has it been Loew's practice, in seeking to
2326 license each run, to follow the same factors of productivity of revenue which you have mentioned as connected with the Loop run?

A. It has.

Q. And, in connection with each run granted, have you granted to the theatre a certain exclusiveness by means of clearance over competing theatres?

A. We have.

Q. What, in your opinion, is the importance, from the standpoint of Loew's, in licensing these pictures in these exclusive runs, starting with the larger theatres and going down through several different runs with clearance provisions all the way down?

The Witness: I don't know as I understand the question.

Mr. Seeley: Q. What advantage, what business advantage, if any, is it to your company to license its pictures in that way rather than licensing them some other way?

A. To obtain the most revenue.

Q. Have you an opinion, based upon your experience, as to whether Loew's could obtain as much revenue as it has obtained, without licensing those prior runs in big theatres with exclusive clearance?

2327 A. I have.

Q. What is your opinion?

A. The opinion is that we would not get as much money for our product if we did not license them in the manner that we do.

Q. Have you an opinion as to whether or not Loew's could produce and distribute in Chicago, in as many theatres as it does, the kinds and quality of pictures which it has distributed, if it did not license them in the manner you have described?

Mr. McConnell: I object to that, if the Court please. He has not shown he has produced any pictures.

Mr. Seeley: He sells them. He is the one who gets the money out of them, I take it.

The Court: Do you think the question comprehends what he has to do with the producers?

Mr. Seeley: Only in a remote way, your Honor.

Mr. McConnell: It seems to me that it does.

The Court: Restrict it to the activity in which he is engaged.

Mr. Seeley: Very well, I will.

Q. Have you an opinion as to whether the revenue which Metro gets out of its films, in the district under
2328 your supervision, would be materially reduced if it were not for them licensing for those exclusive runs you have described?

A. I have.

Q. What is your opinion, sir?

A. My opinion is that we would not get as much money.

Q. Have you an opinion, based upon your experience, as to whether it would be possible for you to offer and license your pictures to subsequent run theatres in Chicago at license fees as low as you do license them unless you got the larger revenues out of the prior run theatre?

The Witness: I don't think I understand that question.

Mr. Seeley: Q. Does the amount of revenue which Loew's obtains from its prior runs, these exclusive runs in the larger theatres, in your opinion have anything to do with its ability to furnish films to subsequent run theatres at much lower license fees?

A. It does.

Q. Will you explain to the jury why those two things are interrelated?

2329 A. In order to get the maximum amount of revenue, we feel that we have to first play them in what we think are the most important and the biggest revenue-producing theatres in every community,—Chicago is what we are talking about,—and being able to get that revenue from the larger theatres enables us to produce pictures of a quality that we could not produce without getting that important revenue, and, in doing that, we can serve, to the smaller theatres, pictures of a better quality than we could if we did not have that important revenue.

Q. Now, I take it you are familiar with the general pattern of runs and clearances according to which motion picture films have been distributed here in Chicago during the past fifteen or twenty years?

A. I am.

Q. And the method by which your company has released its pictures for exhibition has been quite similar, has it not, to the manner in which other distributors have licensed theirs?

A. It has.

Q. Do you know that from observation?

A. I know that from experience.

Q. Yes. Do you know of any understanding or
2330 agreement or any common plan or design between Loew's and any other distributors to bring about that uniformity?

A. I do not.

Mr. McConnell: I object to that, if the Court please. It is a question of ultimate fact as to what these facts spell.

Mr. Seeley: It is a question of this man's knowledge also.

The Court: He is merely asking him if he knows anything in connection with that chain of circumstances.

Mr. Seeley: Q. Now, are you familiar with the term that has been used here in the court room, "Chicago Releasing System"?

A. I am.

Q. State, if you know, whether this so-called system has any existence independent of what is written into the film license agreements between one distributor and one exhibitor and another distributor and another exhibitor, and so forth.

The Witness: I don't think I understand that question quite clearly.

Mr. Seeley: Q. Do you know of any agreement or plan that is in existence to impose a system of licensing upon distributors or upon exhibitors here in Chicago?

2331 A. I do not.

Q. Is it or is it not true in your experience that that so-called system is the result of many separate license agreements?

Mr. McConnell: I object to that as calling for a conclusion.

The Court: I think that objection ought to be sustained.

Mr. Seeley: All right.

The Court: That calls for a conclusion on the part of the witness. The objection is sustained.

Mr. Seeley: Q. Mr. Shirley, in your experience as a district manager for Metro pictures, did you ever attempt to license a season's product for Metro by selling to some of the smaller theatres clear of runs in some of the larger theatres which had previously had the first runs?

A. Yes, I had that experience.

Q. Well, will you tell the jury how that came about, what caused you to make that attempt and what you did and what the results of the attempt were?

A. Well, back in 1917-18 and '19, when I first came to Chicago, I came here with a limited knowledge of
2332 Chicago conditions, and my experience had been acquired in another part of the country, and I did not feel I was getting results that we were entitled to from the theatres to whom I was selling, and I had quite a few independent exhibitors come in and say, "Well, why can't I buy this run?" in preference to some other theatre who had a prior run over them, and it led me to feel that I probably might be able to do better if I sold the other fellow first. They would tell me, "We'll give you as much money or more money than—"

Mr. McConnell: I object to conversations that we are not bound by.

The Court: Yes, leave out the conversation.

Mr. Seeley: Go ahead and tell what you did and what the result was.

The Witness: Well, the following season I determined to try and sell these other exhibitors who claimed that they would pay as much—

Mr. Seeley: You can't repeat what they said. Just what you did, please.

The Witness: I attempted to sell the theatres that had been repeating on the other houses, with the consequence that I didn't get any more money from those theatres
2333 when they got the picture clear than I was when they repeated them, with the net result that I got less money for my product in that particular season.

Mr. Seeley: Q. Did Loew's, as far as you know, have anything whatever to do with the introduction of double features in Chicago theatres in 1936?

A. They did not.

Q. Do you know of any understanding, agreement or common plan or design, between Loew's and any other distributor, with respect to such double features in 1936?

A. I do not.

Q. Or since?

A. I do not.

Q. Do you know of any understanding or agreement or common plan or design, between Loew's and any other distributor, to discriminate, in the city of Chicago, in favor of affiliated theatres and against independently owned theatres?

A. I do not.

Q. Do you know of any such understanding or plan or design to refuse to license the Jackson Park Theatre except in the first week of general release.

A. I do not.

2334 Mr. Seeley: You may cross.

Cross-Examination by Mr. McConnell.

Q. Are you retired?

A. No, sir.

Q. You spoke of being ill. Are you ill at the present time?

A. Well, I am not ill, no. I think I can term it that way.

Q. What I mean is, is there anything in your present situation that a lawyer should be careful of in cross-examining you?

A. Well, I don't think anybody can cross-examine me in any manner that I would not be able to survive it.

Q. Well, that is what I wanted to know, if you have some situation—

A. I don't expect to be abused.

Mr. McConnell: You won't be.

The Witness: Thank you, sir.

Mr. McConnell: Q. You came with the Company, you say, in 1917?

A. Yes, sir.

Q. And what film experience had you had prior to 1917?

A. I was branch manager from 1908 until that time.

Q. With what Company?

A. First with the Pittsburgh Calcium Light and Film Company, then with the General Film Company.

Q. Now, you said that you had had some other ex-
2335 perience in that connection, as to a different means or method of selling film. What was that experience?

A. Well, I tried to describe, in answer to that question, that I had been selling what we thought was the more important accounts, and in the course of those negotiations the lesser accounts was often asked why they could not buy.

Q. I am talking now about experience here.

A. I am talking about my experience here. That happened right here in Chicago.

Q. All right; but you said due to experiences you had

at other places, you decided to institute a different system here than there was in force here. That is the way I understood your testimony.

Mr. Seeley: I think what he testified was that he had not had any previous experience like Chicago. I may be wrong, but I think that is what he said.

Mr. McConnell: All right. I misunderstood your testimony, then.

Q. Your experiment, then, was only here in Chicago?

A. That is right.

Q. Not somewhere else?

A. That is right.

Q. Now, when did you first enter into the franchise agreement with Balaban & Katz?

A. 1925.

Q. And that ran for ten years, didn't it?

A. The first one was for a period of ten years, yes; the 1925 contract was for a period of ten years.

Q. That would run to 1935?

A. That was supplemented by another contract which was made with Publix. It embraced the B. & K. contract, or rather stated that it in no way effected the B. & K. 1925 contract, which was for a period of ten years, beginning with 1927. That subsequently was changed after, in about 1934.

Q. Well, that was the expiration date of the franchise, which would be about the time that this franchise that is in evidence was executed by your Company?

A. Yes.

Q. Do you know the document I am referring to? Let us see the document, please, Plaintiffs' Exhibit 46. You can keep this, because I am going to ask you some questions about it.

Now, when did the document or contract which preceded that, expire?

A. Well, it would expire with the beginning of this contract.

Q. And who did you negotiate—you signed that contract, did you not?

A. I don't remember whether I did or not.

Q. Will you look and see, please?

A. No, I did not sign this.

Q. You did not sign it?

A. No, sir.

Q. Who did sign it?
A. E. M. Saunders.
Q. Do you know his signature?
A. Yes, sir.
Q. Did you have anything to do with the negotiations of that document?
A. I did.
Q. And with whom?
A. With Mr. Walter Immerman, Mr. Barney Balaban, Mr. Joe Kaufman.
Q. And where were those negotiatios held?
A. Part of them were held here, and part of them were held in New York.
Q. Is there any correspondence with reference to it?
A. Well, I wouldn't be able to tell you without checking it, whether there is. There might be some, I don't know.
Q. Well, were the terms of it discussed back and
2338 forth across the table?
A. They were.
Q. Now, at that time you had been in the film business here in Chicago for twenty years?
A. Yes, sir.
Q. And you were familiar at that time with the so-called Chicago system of release?
A. Yes, sir.
Q. And that system of release is set forth in that contract, is it not?
Mr. Seeley: I object to that as calling for the witness's conclusion. The document speaks for itself.
The Court: Is there any question about it?
Mr. Seeley: There certainly is.
The Court: As to whether the system of release is set forth in that contract?
Mr. Seeley: Why, certainly. That specifies the release of Metro pictures to the Balaban & Katz Theatres. It does not specify any Chicago system of release.
Mr. McConnell: Well, he has testified as to his knowledge of the system of release. I have a right to cross-examine him on it.
The Court: As to the system of release set forth in that contract. Is that what you are asking him?
Mr. McConnell: I am asking him—well, read the
2339 question, please.
(Question read.)

Mr. McConnell: I am not attempting to vary this contract, your Honor.

The Court: Well, what you are attempting to do is ask this witness whether or not the system set forth in that contract is the so-called Chicago system of release. Isn't that the basis of your question?

Mr. McConnell: Yes.

Mr. Seeley: I think the document speaks for itself.

The Court: Oh, he may answer that question.

A. Well, there is not any system of release so far as Chicago generally is concerned. It is specified in this contract. What this contract specifies is, specifically, the availability and the clearance of each theatre in the contract, as it relates to other theatres in the City of Chicago.

Mr. McConnell: Q. Well, it sets forth different release dates, doesn't it, B week, C week, and A week?

A. It does.

Q. And that is the Chicago system of release, isn't it?

A. It is; was at that time.

Q. It sets out certain minimum admission prices, doesn't it?

A. It does.

2340 Q. And aren't those minimum admission prices the system of Chicago release?

Mr. Seeley: Oh, I object to that. You can not have two things that are both Chicago system of release. If he wants to ask him if it is a part of it, that is all right.

Mr. McConnell: Q. It is a part of it, isn't it?

The Court: One has to do with release dates, and one has to do with minimum prices. They both relate to the Chicago system of release. That is what you are driving at?

Mr. McConnell: Yes.

The Court: He may answer that question.

A. Well, this contract shows the minimum admission prices for the Balaban & Katz theatres for this product, or the product served at this particular time, and the minimums that are shown in here are what were generally charged in the different weeks of release, as it relates to other theatres in the City of Chicago, the minimum charges.

Mr. McConnell: Q. Minimum charges?

A. In other words, if we sold any other theatres in the City of Chicago in these particular weeks, those are the

minimum charges, admission prices that would be in
2341 there.

Q. And you testified that from your general experience you know that that is the sort of a system that the other distributors were using at that time?

Mr. O'Brien: I object to that. He has not testified to any such thing.

Mr. McConnell: He did testify to that.

The Court: Well, I don't remember.

Mr. O'Brien: He did not testify to that at all.

Mr. Adcock: It is an assumption.

Mr. O'Brien: He did not testify what other distributors were doing.

The Court: How can you tell, when you read a long statement like that, and somebody disputes it, whether or not he gave that testimony. Now, who is going to decide it?

Mr. McConnell: Well, the witness ought to know. I asked him.

Mr. Seeley: Well, ask him again. That will settle it.

Mr. O'Brien: As him if he said it.

Mr. Seeley: Start over again.

Mr. O'Brien: I object to telling him what he said. He said he can not remember it.

2342 The Court: You stated that he said it. Now, they dispute whether he said it or not. You can put a question and ask him whether he said it.

Mr. McConnell: Well, I will withdraw that question for the moment.

Q. You had familiarity, from your general experience, of the fact that different theatres played product licensed by other distributors, other than yourself, under the Chicago system of release, did you not?

A. Only in a general way. I never saw any of their contracts. I only understand that they charged the same admission prices.

Mr. O'Brien: I object to what the witness understands, unless he knows it. He can not give an assumption.

Mr. McConnell: He has a right to testify to his under—

The Court: The objection is overruled.

Mr. McConnell: Q. You do cross checking, and check the play dates of different theatres, do you not, in the conduct of your business here in Chicago?

A. I don't understand that question, sir.

Q. Well, do you check, through the newspapers, what the different theatres are playing in different weeks?

A. As it relates to Loop theatres.

2343 Q. Well, as it relates to Loop theatres and as it relates to other theatres, too, don't you?

A. Not that I know of, as it relates to other theatres in the City of Chicago.

Q. Well, what do you check, what checking do you do as to the Loop theatres?

A. Well, we keep a record of what each theatre plays each week.

Q. And you know from what they are playing, who produces that picture and who distributes it, do you not?

A. We would.

Q. So that you know that those distributors are playing at 75 cents minimum admission, when that picture appears in the Loop?

A. That we can tell from the newspapers, yes.

Q. You can tell all the rest of it from newspapers so far as subsequent runs, if you read them, can't you?

A. No.

Q. Do you know what the B theatres are, in the city of Chicago?

A. I don't know them all. That is, I can not remember them all.

Q. Do you know all the A theatres?

A. Yes.

Q. And you know most of the B theatres, don't you?

2344 A. Well, I know them all. I say I can not remember them all, just from memory

Q. You just can not remember them offhand?

A. That is right. Probably if I took time I could probably tell you what each one of them was.

Q. Did you have any chart or anything in your office indicating the different theatres, that is, A, B, C, and D?

A. Yes.

Q. And that would give them all a rating, wouldn't it?

A. It would.

Q. And show their play date, that is, every time when the pictures are available to them, and their minimum admission prices, wouldn't it?

A. The chart doesn't show that, no.

Q. But you know the minimum admission price?

A. I know the minimum admission price of the various weeks.

Q. Now, in that contract which you have in your hand, you say you took the clearance schedule and the minimum admission price off the other franchise, the preceding franchise agreement?

A. That is, if my memory serves me, that is what we did.

Q. So that there wasn't much discussion about that, was there? You simply took that off the other con-

2345 tract?

A. There was discussion to the effect that clearance was to be the same as the preceding season.

Q. And unless it was the same, you were unable to sell Balaban & Katz any product in their Loop theatres, wasn't that the situation?

Mr. Secley: I object to that. That is a hypothetical question. How does he know?

Mr. McConnell: Why, he is handling the negotiation.

The Court: Objection overruled. He may answer.

A. I don't know.

Mr. McConnell: Q. Well, you knew that before your clearance schedule was arranged, your clearance agreement made, you could not sell any pictures in a Loop theatre, didn't you, in the B. & K. Loop theatres?

A. I did not talk about the clearance schedules until after the terms were settled for the Loop theatres.

Q. Well, your clearance schedule is all part of your franchise, isn't it?

A. It is.

Q. And that contract was not signed without the clearance schedule in it, was it?

A. It was not.

2346 Q. So that the clearance schedule was agreed upon before any product was purchased for the Loop theatres by Balaban & Katz, under that contract?

Mr. Adcock: Oh, I object to that, your Honor. The clearance schedules are part of the contract, and the contract is signed all at one time. One could not be ahead of the other.

The Court: I think he is entitled to make that inquiry of the witness. Do you know the question, Mr. Witness?

The Witness: No, I don't, sir.

The Court: Read the question, please.

Mr. McConnell: Read the question.

(Question read.)

A. Well, the clearance schedule is agreed upon before contracts are signed.

Mr. McConnell: That is what I am getting at.

Q. And no product is sold to Balaban & Katz for its Loop theatres until the contract was signed, was it?

A. That is right.

Q. Now, Balaban & Katz, you say, made a request for that clearance which is set forth in that schedule?

A. Yes, sir.

Q. And you acceded to that request?

2347 A. We agreed to it.

Q. And in that clearance it provides that the Jackson Park Theatre shall not play prior to the first week of general release, doesn't it?

A. I would have to read the contract.

Q. Well, will you do that?

A. (Continuing:) To make sure of that.

(Short delay.)

The Witness: It does.

Q. So that if that contract is valid, you could not sell the Jackson Park Theatre any product prior to the first week of general release during the lifetime of that contract?

A. That is right.

Q. And how long did the contract last?

A. For five years.

Q. From what date to what date?

A. The first day of September, 1936, which would make it the 31st of August, 1941.

Q. And it would not make a bit of difference what kind of a plant the Jackson Park Theatre had during those five years, would it, so far as your ability to sell them any product prior to the first week of general release?

2348 A. Not if they exercised their rights under the contract.

Q. And you mean by "they" Balaban & Katz?

A. Right.

Q. There is a provision in that contract, is there not, that you are not to license any other exhibitor for runs

below the minimum admission price schedule set out in that contract?

Mr. Seeley: I object to characterizing the contract. Let us turn to the provision, and have the terms before us.

The Court: Objection overruled. Do you understand the question, Mr. Witness?

The Witness: I would rather have it repeated, your Honor.

The Court: Read it, please.

(Question read.)

A. I don't know whether there is such a provision in this contract.

Mr. McConnell: You will find it under, indexed under "Minimum Admission Prices".

Mr. Seeley: Do you recall, Mr. McConnell, whether that is in both or in one of the schedules?

The Witness: I don't seem to see it indexed here.

2349 Mr. McConnell: It is indexed. I think it is pages 20 and 21, something like that.

A. There is such a clause.

Mr. McConnell: All right. The witness has answered the question.

Mr. Adcock: Wait. I did not hear it.

Mr. Seeley: I did not hear the answer.

The Court: He answered, "There is such a clause". What is the next question?

Mr. McConnell: Q. Now, the other exhibitors were competitors, were they not, of Balaban & Katz?

A. I am sorry. I was—

Mr. McConnell: Read the question to the witness.

The Court: Q. Were the other exhibitors competitors of Balaban & Katz?

A. Yes, sir.

Mr. McConnell: Q. So that you were undertaking, with Balaban & Katz, to fix minimum admission prices under which their competitors must play your product?

Mr. Seeley: I object to that as argumentative, trying to argue the law with this witness.

Mr. McConnell: This is cross-examination.

Mr. Seeley: And further, as characterizing the terms of a written contract, which is in evidence.

2350 The Court: I think the contract in that respect speaks for itself. Whatever is in there, why, it is binding on the people who are parties to it.

Mr. McConnell: All right. Your Honor is right.

Q. Now, the reason that the first run of a picture is more valuable to the exhibitor is that the picture has not been played around the neighborhood, isn't that correct?

A. I should think so; that is right.

Q. He is able to pay more money for it because it has more box office appeal, isn't that correct?

A. If it has not been shown elsewhere in the neighborhood, yes.

Q. And the more it is played in the neighborhood, the less attraction it has at the box office, isn't that correct?

A. Not in all cases.

Q. Well, generally that is so, isn't it?

A. Generally speaking it is so. Occasionally it does not work that way.

Q. And as the picture is played, and down through the successive runs, you could not charge as much money for that picture, could you, from an exhibitor?

A. Speaking of film rental?

2351 Q. Yes.

A. I would try and charge them, or would charge them whatever I felt the returns would warrant.

Q. You would charge him what you thought you could get, but he would not pay as much for the picture because it would not be worth as much to him at the box office, would it?

A. It would not be worth as much.

Q. No, it would not, and he would not pay it, would he?

A. The chances are he would not.

Q. And that is the reason you can not get as much rental for your subsequent run pictures, isn't it?

A. One of the reasons.

Q. Well, it is the main reason, isn't it?

A. Principally, yes.

Q. Yes. Now, in your contracts under which you license films, you provide that any exhibitor that violates those minimum admission prices forfeits the run, do you not?

Mr. Seeley: I object, again, characterizing the terms of a contract which are in evidence.

The Court: Well, if you are asking him what the contract recites, I imagine the contract speaks for itself, doesn't it?

Mr. McConnell: Well, let us have the contract. I
2352 will have to go through this every time. I thought we could save a little time, this time. Let us have the Metro contracts with the Jackson Park Theatre.

Mr. Seeley: Your Honor, there isn't any doubt about what is in the contracts. They have been read to the jury.

Mr. McConnell: That is why I am trying to shorten it, your Honor, because there isn't any question about it.

The Court: What is the objection?

Mr. Seeley: Why argue with this witness about what is in there? If it is in evidence, it is in. Why go through it again?

Mr. McConnell: I want to know if the witness knows. He has testified he knows nothing about this, about this agreement, and the conspiracy here alleged. I want to know what it is.

The Court: All right. Let's have the question again. Read the question, will you please, Mr. Reporter.

Mr. McConnell: Read the question to the witness, please?

(Question read.)

The Court: The objection is overruled, as long as
2353 you concede that is in the contract.

A. There is a provision in there that—

Mr. Seeley: I ob—

The Witness: (Continuing.) —the distributor can forfeit or can take away the run, or stop the contract. It doesn't say he has to.

Mr. McConnell: Q. He has the primary right to do it?

The Witness: He has the right to do it, yes.

Q. Do you think the fact that you can get more money doing business in a certain way is any justification for doing it that way if as a matter of fact it happens to be against the law?

Mr. Seeley: I object.

The Court: Objection sustained.

Mr. McConnell: Q. Well, is the sole justification for this system that you can make more money out of it, from your point of view, now?

A. You are speaking of the system—

Mr. O'Brien: I object to his statement about his sole justification for the system. He has not spoken, attempting to justify the system. If he asks about the manner in which they license their product, that is all right.

Mr. McConnell: All right. I will withdraw the
2354 question. Counsel gets up and tells the witness the answer, and then— I withdraw the question.

Mr. O'Brien: You should have withdrawn a number that he was never entitled to answer.

Mr. McConnell: Q. Now, what is the purpose of this clearance between runs?

A. To protect the revenues we receive.

Q. Of the prior run?

A. From the prior run.

Q. In the prior run?

A. To protect that revenue and to protect the revenue in the various other runs.

Q. Well, it is to protect, primarily, the revenue of the person who buys the clearance, isn't it?

A. I should say so.

Q. That is what he buys it for, isn't it?

A. I should say so.

Q. It is to protect him from the competition at an earlier date of any other theatre, with the same product, isn't that right?

A. That is right.

Q. And that is the same purpose for these minimum admission prices, isn't it?

A. The same purpose we would give any other theatre clearance on.

2355 Q. Well, it is the purpose, isn't it?

A. It is.

Q. Now, under that contract which you have in your hand, you had a percentage in the box office receipts of the Balaban & Katz theatres, did you not?

A. I would have to read the contract to ascertain that.

Q. Rental provision?

A. Beg pardon. Yes, there is a provision here that we can participate beyond a certain amount of business they do. There is a guaranty.

Q. You are guaranteed how much business?

A. We are guaranteed $429,300.

Q. Beyond that amount you participate on the percentage, do you not?

A. Beyond that amount we participate in a sum, or a certain number of dollars, and then another sum or certain amount beyond that point.

Q. So that you had an interest in the box office take of Balaban & Katz during the entire life of that agreement?
A. That is right.
Q. And you had a right to go in and look at their books and records, didn't you?
2356 A. We did.
Q. To see whether or not they were playing fair with you under it?
A. That is right.
Q. Do you remember having a conversation with Mr. Leo Salkin in the month of August, 1926, where he came to you and requested that your Company lease some of their product for exhibition in the Granada Theatre and in the Marbro Theatre, which Theatres were to be opened very shortly?
A. I don't remember such a conversation.
Q. You do not recall any such conversation?
A. That is too far back for me to remember, specific meetings.
Q. Do you recall that you stated that you would like very much to exhibit their product in the said Marbro and Granada Theatres, and requested that Mr. Salkin return in a few days and you would let him know what could be worked out?
A. I don't recall.
Q. Do you re ll that?
A. No.
Q. Do you recall that he returned within a few days, and thereupon you stated that you had taken the matter up with the Balaban & Katz organization, and had
2357 attempted to work out a scheme whereby the Marbro and Granada Theatres could have second choice of their product after it was first picked by the Balaban & Katz organization for their first run theatres, but that the Balaban & Katz organization had absolutely refused to permit their company to exhibit or lease any of their product for exhibition in the Marbro and Granada Theatres? Do you recall that?
A. I do not.
Q. Do you know Mr. James E. Coston?
A. I do.
Q. How long have you known him?
A. Oh, practically ever since I have been in Chicago.
Q. Is he here in the court room?

A. He is.
Q. Point him out.
A. Sitting behind Mr. O'Brien there.
Q. Do you recall a talk with Mr. Coston at which Mr. Mendelsson and you were present, in which Mr. Coston told you, or in which you told Mr. Coston, rather, that there was product available, of Metro-Goldwyn-Mayer, in excess of what Balaban & Katz were using for its theatres?
A. I don't recall.
Mr. Seeley: Did you state the time? I don't be-
2358 lieve I heard.
Mr. McConnell: That was in the late summer or fall of 1927.
The Witness: I don't recall the conversation.
Mr. McConnell: Q. Do you recall that you stated to Mr. Coston that you and Mr. Mendelsson told him that you could not lease said pictures to the Marbro because the Balaban & Katz people wanted them?
A. No, I don't recall that.
Mr. O'Brien: Because what? I didn't hear that. Mr. Reporter, will you read that?
Mr. McConnell: Because Balaban & Katz wanted them.
Q. Do you recall that Mr. Coston thereupon stated to you that the small theatres do not conflict with the large theatres, and that he called your attention to the fact that he individually owned and operated the Lexington Theatre, and the Drexel Theatre on 63rd street, which are within a few blocks of the Tivoli Theatre, and which repeat pictures first exhibited at the Tivoli, and that it is the custom in the City of Chicago for the smaller theatres to repeat after the larger theatres? Do you recall him saying that?
A. I don't recall that conversation, no, sir.
2359 Q. Do you recall that you—
Mr. Seeley: Now, just a minute. The witness has stated he does not recall the conversation. Now, I do not think counsel has the right to use this as an excuse to read into the evidence some document which he holds in his hand.
Mr. McConnell: We went all through that on a previous occasion.
The Court: I thought you folks raised that question on him, and it was decidedly adversely to him.
Mr. Seeley: No. As I—

Mr. McConnell: I can not be wrong on it both ways. We went through—

Mr. Adcock: That is an entirely different proposition. I don't know what this document is, but the thing—

The Court: I don't, either.

Mr. Adcock: (Continuing.) —that was read to the witness was something he had signed. Here is something—

The Court: Who signed?

Mr. Adcock: Here is a document, that I don't know what—

The Court: Who had signed what?

2360 Mr. Adcock: The witness—that Salkin had signed, that is, Richard Salkin.

The Court: But you were not interrogating Richard Salkin, were you?

Mr. Adcock: Yes.

The Court: He did not sign that affidavit, did he?

Mr. Adcock: No, but the affidavit is an entirely different thing.

The Court: Is that what you were reading from when this question arose?

Mr. Adcock: No, no. We were reading from a document that he had signed.

The Court: Oh, I recall now. It was that—

Mr. Adcock: An entirely different proposition.

The Court: (Continuing)—independent theatre owners.

Mr. McConnell: We all agree, if the Court please, there isn't any question but what you can lay a foundation for impeachment by asking the witness what a conversation was. If he denies the conversation, or doesn't recollect, then you can prove the conversation. That is what I intend to do.

Mr. O'Brien: Now, wait a minute. I agree with Mr. McConnell.

Mr. Seeley: If he denies it, you can prove it, but

2361 you cannot impeach a witness by proving something he remembers nothing about.

The Court: What?

Mr. Seeley: You cannot impeach a witness by proving something he says he has no recollection about.

The Court: You cannot impeach a witness that way?

Mr. Seeley: No.

Mr. O'Brien: Of course not.

The Court: You mean a witness can say, "I don't recall", then you cannot introduce the impeaching statement?

Mr. Seeley: I mean exactly that. If there is some fact here which they want to prove, independently of this witness, they will have to do it by putting other witnesses on.

Mr. McConnell: The fact that he does not recollect would be impeaching.

Mr. O'Brien: I would like to see a case on that. When he denies, then you lay a foundation.

The Court: Well, do you folks have law to that effect, that a witness can just get up and say, "I don't recollect", and you cannot impeach him?

Mr. Seeley: Why, I am sure we can find such law.

Mr. O'Brien: Reason answers that.

2362 The Court: What?

Mr. O'Brien: In impeachment you show something contrary to what he said.

The Court: Oh, I understand, but if the witness is permitted to go on the stand, and you ask him, "Did you say so and so last week or last year," and he says, "Well, I don't recollect whether I said it or not", then you are not permitted to impeach that sort of a statement?

Mr. O'Brien: You can prove it, if you have something—

The Court: He is attempting to do what? To prove what he said at that time. What is impeachment?

Mr. Adcock: Impeachment is to show that he said something different than what he said now.

Mr. O'Brien: I don't want to argue further before the jury, if the Court please.

Mr. Adcock: That is their purpose—

Mr. Seeley: I might point out that this is fifteen years ago.

Mr. McConnell: You brought it up in your direct examination of this witness. You went into the Marbro matter.

Mr. Seeley: I did. I asked him what he remembered about it. You may do the same thing.

2363 Mr. McConnell: I am going to.

The Court: The objection is overruled. He may answer the question.

Mr. McConnell: Will you read it as far as I got?

(Record read.)

Q. That he told you and Mr. Mendelsson that it is the custom in the City of Chicago for the smaller theatres

to repeat after the large theatres, that he was told by you and Mr. Mendelsson that the Balaban & Katz organization desired to exhibit said pictures in the smaller theatres of their chain of motion picture theatres on the west side. Do you recall that?

A. I don't recall that specific conversation, no, sir.

Q. Do you recall whether or not you did give the Granada and the Marbro any product of the 1927-28 season?

A. I could not tell that without checking records.

Mr. McConnell: I think that is all.

2364 *Re-Direct Examination by Mr. Seeley.*

Q. Mr. Shirley, at the time of this alleged conversation with Mr. Coston, in 1927, isn't it a fact that Metro then had in effect a franchise with Balaban & Katz for all its pictures?

A. It is.

Mr. McConnell: I object to that. Let us have the franchise.

Mr. Seeley: All right. I can bring it in, but I haven't it here today.

Mr. McConnell: Well, you can put it in later, if you want to. I want the best evidence of that. That is an issue.

The Court: He said he will bring it in. The answer may stand. He will bring it in.

Mr. Seeley: Q. Mr. Shirley, will you please look on page 20 of Plaintiffs' Exhibit 46, at the paragraph numbered 35, and tell me if that is the paragraph to which you had a reference when you spoke about a provision in this contract covering minimum admission prices?

A. It is.

Q. I will ask you to observe that paragraph 35,
2365 and I will ask you whether it is not a fact that that paragraph refers only to minimum admission prices to be charged by Balaban & Katz with respect to the particular pictures licensed under that agreement by Metro?

A. It is.

Q. So far as you know, is there any provision in that contract which in any way affects what any theatre in the City of Chicago could charge showing somebody else's pictures?

Mr. McConnell: I object to that. The contract speaks for itself.

The Court: He may answer that question.

A. So far as I know, it does not.

Mr. Seeley: Thank you.

Q. How about these percentage pictures? Is Balaban & Katz the only exhibit to whom Metro sells pictures on a percentage or sharing basis?

A. It is not.

Q. Does Metro have contracts with numerous independent exhibitors in the City of Chicago, which are also on a percentage or sharing basis?

A. They do.

Q. Is it the selling plan of Metro to sell as many
2366 of its pictures as possible on that basis, to all exhibitors?

A. Certain exhibitors, it is.

Mr. Seeley: I think that is all.

The Court: Any further questions of this witness?

Mr. Seeley: Just a minute.

Mr. McConnell: I do, when they are through.

Mr. Seeley: I am through.

Mr. Adcock: I just have one question.

2367 *Cross-Examination by Mr. Adcock.*

Q. Isn't the purpose of minimum admission prices fixed in a contract with reference to the exhibition of pictures in a certain run to protect your picture or copyright for use in subsequent runs?

Mr. McConnell: He put the whole answer in the witness's mouth here.

The Court: Well, you asked a question on the same thing. He may answer the question.

A. That is one of the purposes.

Mr. Adcock: That is all.

The Court: Mr. O'Brien, do you have any questions?

Mr. O'Brien: Yes, your Honor.

2368 *Cross-Examination by Mr. O'Brien.*

Q. In 1926 or 1927, Mr. Shirley, was Mr. Coston connected with Warner Bros., if you know?

A. Mr.—no, he was not connected with Warner Bros. at that time.

Q. Or any of its companies?

A. Beg pardon?

Q. Nor any other of the Warner Companies?

A. Not to my knowledge.

Mr. O'Brien: That is all.

The Court: Have you any further questions, Mr. McConnell?

Mr. McConnell: Yes. One more question.

2369. *Recross-Examination by Mr. McConnell.*

Q. You were asked the question of whether or not the contract covered any product so far as minimum admission prices were concerned, other than Metro-Goldwyn-Mayor. You are not attempting to add anything or take away anything that is in this contract itself, are you, in answer to that question?

A. No, sir.

Q. In other words, the contract would determine that question?

A. So far as I know, yes.

Mr. McConnell: That is all.

(Witness excused.)

The Court: We will take a recess for about ten minutes. Do you have another witness ready?

Mr. Seeley: Yes.

(And here a short recess was taken.)

2370 FELIX MENDELSSON, a witness called on behalf of the defendant Loew's, Incorporated, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Seeley.

Q. You may state your name, please?

A. Felix Mendelsson.

Q. Where do you live, sir?

A. 215 East Chestnut Street.

Q. What is your business?

A. Well, I am not active in business now.
Q. What was the last time you were active in business?
A. Manager, Metro-Goldwyn-Mayer.
Q. When did that employment terminate?
A. In 1938.
Q. For how many years prior to 1938 were you in the employ of that company?
A. Approximately twenty years; that is, including the old Goldwyn Company.
Q. Yes. I meant to say that Company and its predecessors. When was it that Goldwyn became a part of the Metro organization?
A. 1924.
Q. That is when you came with Metro?
2371 A. Yes, sir.
Q. As Manager?
A. Yes, sir.
Q. And during that time, from 1924 to 1938, what position did you hold with Metro-Goldwyn-Mayer?
A. Well, two years, from 1924 to 1926, I was District Manager for the Company in Philadelphia, and in 1926, January of 1926, I came to Chicago as Branch Manager.
Q. Will you describe briefly your business experience prior to 1924, particularly with respect to any experiences you may have in the film business?
A. I had none previous to—oh, 1924?
Q. Yes.
A. I joined the World Film in 1916—in 1916. I was Branch Manager in Cincinnati until 1918. In 1918 I joined Goldwyn and came to Chicago as a home office representative, traveled around in the west, and in 1920 I became Branch Manager for Goldwyn in Philadelphia, and in 1922 I became District Manager for Goldwyn, and I occupied that position at the time the Company was taken over by Metro, Metro, in 1924.
Q. During the time that you were Branch Manager in Chicago for Metro-Goldwyn-Mayer did you have any
2372 occasion to know and to have conversations with Mr. Richard Salkin?
A. Yes.
Q. During the course of the years, from 1927 down to the time you left the Company, approximately how frequently would you say you had occasion to talk with him?

A. Well, it wasn't very often. I would say perhaps once a month, we would get together, either talk in the outer office, or he would come into my room, or I would meet him on the street, or something like that, and we would have a chat.

Q. Did you personally negotiate the film deals for the Jackson Park Theatre during that period?

A. No.

Q. Some salesman did that?

A. The south side salesman.

Q. In any of your conversations with Mr. Richard Salkin, did he say anything to you about desiring a better playing position for the Jackson Park Theatre?

A. No.

Q. In the time that you were Branch Manager for that Company in Chicago, was it reported to you by any of your salesmen or anyone else, that the Jackson Park Theatre desired a better playing position?

2373 A. No.

Q. Do you know Mr. Edward I. Bloom?

A. No.

Q. Do you know Mr. Mager, of Allied?

A. Yes.

Q. Did he and Richard Salkin ever talk to you together, about the Jackson Park Theatre?

A. No.

Q. Or did you ever talk to Mr. Mager about the Jackson Park Theatre when Mr. Richard Salkin was not present?

A. No.

Q. Are you the father of Teddy Mendelsson, who has been referred to here?

A. Yes, sir.

Q. Where is your son now?

A. He is in the Army, Camp Meade.

Q. About what period of time was he the south side salesman for Metro?

A. My recollection is from 1933 until 1939.

Q. Did he ever say anything to you about the Jackson Park Theatre wanting a better run?

A. No, sir.

Q. Do you know of any understanding or agreement or common plan or design between Metro or Loew's, and any

one else to set up and maintain, in the City of Chi-
2374 cago, a system of releasing pictures whereby affiliated theatres would be given preference and priority over independent theatres?

A. No.

Q. Or do you know of any understanding, agreement or common plan or design between Metro or Loew's or any other distributor, to discriminate in the licensing of motion pictures against independent exhibitors, including the Jackson Park Theatre?

A. No.

Q. Or to refuse to license the Jackson Park Theatre in a position earlier than the first week of general release?

A. No.

Mr. Seeley: You may cross-examine.

2375 *Cross-Examination by Mr. McConnell.*

Q. Are you familiar with this franchise agreement?

A. In a limited way, sir.

Q. You have been here in the court room during the cross-examination?

A. Just this morning.

Q. Of Mr. Shirley?

A. Yes, sir.

Q. That franchise agreement provides that you could not license the Jackson Park earlier than the first week of general release, does it not?

A. Yes, sir.

Q. And for the period which Mr. Shirley stated the contract ran, from 1936 down to 1941?

A. Yes.

Q. How long have you known Mr. Salkin?

A. Oh, approximately sixteen or seventeen years.

Q. Do you know Mr. Leo Salkin?

A. Yes, sir.

Q. How long did you know him?

A. About the same length of time.

Q. Did Mr. Dick Salkin, or Richard Salkin, ever work for your Company?

A. I don't think so.

2376 Q. Now, when were these occasions that you saw Mr. Salkin in your office?

A. Well, sometimes he would come to make inquiries at

the desk about certain bookings, or certain, particular pictures, or the plan, he being busy booking pictures, or something like that, occasionally he would come into my office just for a little visit.

Q. Well, about when? Let us get down to dates, now, starting back in 1936?

A. 1936?

Q. Yes. When did you see him in 1936?

A. I could not tell you.

Q. Do you have any independent recollection now of any meeting with him in the year 1936?

A. No.

Q. All right. How about the year 1937?

A. Same.

Q. And the year 1938?

A. I left the Company in March of 1938, and I don't remember anything in January or February.

Q. Where have you ben since you left the Company?

A. Well, I have been spending considerable time in Florida, and the rest of the time in Chicago.

Q. You are retired, is that it?

A. Yes, sir.

2377 Q. How long have you known Mr. Ed. Mager?

A. About fifteen years.

Q. Has he been a broker all that time, do you know?

A. Yes.

Q. He works with your Company on deals, does he not, on bookings?

Mr. Seeley: Did you say "with" or "for", sir?

Mr. McConnell: With.

Mr. Seeley: With.

A. I think there were a few, little accounts that he handled through his booking arrangements, where the salesmen would negotiate with him.

Q. How long has that been true, that is, up to 1938; you got a very limited time here, 1936 to 1938?

A. Well, certainly during those three years.

Q. Now, did you have anything to do with negotiating the franchise?

A. No, sir.

Q. That was handled by whom in your Company?

A. I think the deals were closed in New York, between the officials of Balaban & Katz and our own executives.

Mr. Seeley: I move that the answer be stricken unless the witness states that he knows.

2378 The Court: The answer may go out, unless he indicates that he is testifying from his own personal knowledge.

Mr. McConnell: Q. Well, do you know of your own personal knowledge?

A. My answer would be Yes, they were made in New York.

Q. Who handles your deals in New York?

A. Well, the General Sales Manager, and some of his assistants.

Q. Who was he at that time?

A. Well, I don't know, at the time of the original—pardon me; are you referring to the last five year contract?

Q. That is correct.

A. With Balaban & Katz?

Q. That is correct.

A. One was negotiated about 1935 or '6, in through there.

Q. It is dated September, 1936.

A. Yes.

Q. It would be negotiated probably a month or so preceding that date?

A. Well, our general sales manager in 1936, our General Manager for ten years previous to the time had

2379 been Mr. Feist, so he, probably he and Mr. Schenck probably were the ones that sat in on the conversation.

Mr. Seeley: I move that that be stricken.

The Witness: I don't know.

The Court: That part, "were probably the ones", somesomething like that, goes out.

Mr. Seeley: He says he doesn't know.

The Court: What?

Mr. Seeley: He says now he doesn't know.

The Court: The whole answer goes out, then.

2380 Mr. McConnell: Q. You were not present and had nothing to do with the negotiations?

A. No.

Q. But you did know about the franchise, is that right?

A. Yes.

Q. I assume your whole organization knew about the franchise—

A. Well, those who were interested, the district manager and so forth.

Q. And the salesmen.

A. In a way, the salesmen, yes.

Q. Did you have charge of the salesmen?

A. Yes.

Q. And when there was such a franchise, did you give them any instructions as to what their limitations were on the sale of pictures?

A. Not specifically.

Q. Well, did you generally?

A. Well, may I explain that in my way? Whenever a theatre, for example, played second week of release in a particular season, then for the following season, we would draw up a selling plan and turn it over to the
2381 salesman. He would then negotiate with the exhibitor on the basis of again second week of release.

Q. This selling plan, who drew that up?

A. That usually evolved right in the National Convention, where the selling plans naturally were discussed.

Q. Where were these National Conventions?

A. All the way from New York to Los Angeles.

Q. And who would be there?

A. Salesmen, office officials, the district manager and branch manager, and on some occasions, the salesmen.

Q. The other companies would be present, would they?

A. Other companies?

Q. Yes, or are you talking about your own company?

A. Yes.

Q. That was a meeting of your own company, is that it?

A. Yes.

Q. You mapped out there a sales campaign, is that right?

A. Selling plan.

2382 Q. In that plan, would you incorporate the various clearance arrangements with a chain such as Balaban & Katz?

A. No.

Q. Well, would you have general information about that?

A. It would not come up at the convention.

Q. Well, when would it come up?

A. When the branch manager laid out his particular plan for the sale of the product in his own territory.

Q. And that would be the thing that the salesmen would work from, wouldn't it?

A. That is right.

Q. So that he would have knowledge and information when he went out to sell, of the arrangement which Balaban & Katz had previously made with your company?

A. Yes.

Q. Is that correct?

A. Yes.

Q. So that when the salesmen went out to sell the Jackson Park, he had nothing available except first week of general release, is that right?

2383 A. Yes.

Q. Now, in your experience here in Chicago, you knew generally about the system of release, did you not?

A. Yes.

Q. Which is prevalent here, and about the minimum admission prices?

A. Yes.

Q. Of the different theatres. And you understood, did you not, that all the distributors were abiding by that Chicago system of release?

Mr. Seeley: I object to that.

The Court: Objection sustained.

Mr. McConnell: I do not understand why I cannot get this man's understanding here. He has testified that he had no knowledge—

The Court: If you ask him questions, but you are just making a statement and at the end of your statement you ask him, "Is that right or wrong?" Ask him questions, and maybe I think we can get along.

Mr. McConnell: Well, this is cross-examination, if the Court lease.

The Court: Even so, I do not understand counsel 2384 has a right to make a statement and then expect the witness to grasp the end of the statement and then decide one way or the other. I think you are still supposed to ask questions.

Mr. McConnell: Q. Well, did you have any understanding as to what the other distributors were doing under this system of release?

A. No.

Q. You did not have any understanding at all about it?

A. When you say "understanding", I don't understand your word "understanding."

Mr. McConnell: All right, maybe I can clarify that.

The Witness: Maybe I have to put a different construction on it. If you mean by—

Mr. McConnell: Maybe I can clarify what I mean.

Q. Did you understand that the other distributors were operating under the same system of Chicago release that you were?

A. Yes.

Mr. O'Brien: I object to what he understood.

Mr. McConnell: He has answered the question.

2385 Mr. O'Brien: You can ask him what he knows or whether he had any conversation, but I am not bound by this witness's assumptions or any understanding.

The Court: Well, did you understand the question when he used the word "understanding"?

The Witness: I would like to have it repeated.

Mr. O'Brien: I would like to have the question read.

Mr. McConnell: He has answered the question.

The Court: I thought he answered the question.

Mr. O'Brien: Maybe he did. There is an objection. I would like to know what the question is.

Mr. McConnell: The question that was asked this witness—

Mr. O'Brien: Ask the reporter to read it.

The Court: Let us read the question. I thought the question was read after the witness said he did not understand the previous question, and a new one was framed and then he answered it.

Mr. McConnell: Read the last question and answer, please.

(Record read.)

The Court. The answer may stand. You under-

2386 stand the question, do you?

The Witness: Yes, sir.

Mr. O'Brien: I move to strike that answer. The term is used obviously in the same sense as an assumption, what he assumes.

The Court: The motion is overruled.

Mr. McConnell: Q. Do you remember a conversation on or about June 9, 1927, between yourself and Mr. Leo Salkin?

A. No, sir.

Q. You do not recollect any conversation at all on that date?

A. Oh, yes, I saw him frequently. We probably had a lot of conversations, but I cannot recollect any particular one or what we talked about.

Q. Do you remember that he applied to you for permission to lease or to exhibit some of the special feature films produced and distributed by your company during the 1927 and '28 season for the Marbro and Granada Theatres?

A. Yes.

Q. And did you state to him, tell him, that because of certain agreements or arrangements with Balaban
2387 & Katz you were unable to do any business or lease any pictures to the Marks Brothers?

A. No.

Mr. Adcock: I want to preserve an objection to that, your Honor.

The Court: That is the same objection you made before.

Mr. Adcock: Yes.

The Court: The ruling will be the same.

Mr. Adcock: And I would like an opportunity to be heard on that.

The Court: I understand that question is asked for the purpose of impeachment.

Mr. Seeley: How can it be, when he has not testified on direct to anything remotely touching the same subject matter? How can it possibly be impeaching? I object to it on the ground he is going outside of the scope of the direct.

Mr. McConnell: I can impeach him on anything that is material to this case.

Mr. Seeley: Not unless he has made some prior inconsistent statement.

The Court: Well, we will rule the same way we did when the previous witness was on the stand.

2388 Mr. McConnell: Read the last question and answer. I have lost my trend of thought.

(Record read.)

Mr. Adcock: Then may the object stand to the same line?

The Court: Yes, sir.

Mr. McConnell: Q. Did you state to Mr. Leo Salkin then that you sympathized with the Marks Brothers in their predicament and that it was a shame, and you would do all you could to aid them, but you could not at that time because you had received positive instructions from New York?

A. No.

Q. Did you say further in that conversation, that your company had agreed to lease some of their products for exhibition in the Sheridan Theatre, operated by Ascher Bros. on the North Side of Chicago, which is in direct competition with the Uptown Theatre, operated by Balaban & Katz, and also had agreed to lease some of your product to the National Theatre playhouses for exhibition in the Capitol and Stratford Theatres, located on the South Side of Chicago, which is in direct competition
2389 with the Tivoli Theatre, located on the South Side of Chicago, but that your instructions forbade you to make any contracts or permit the exhibition of any of your product to the said Marbro and Granada Theatres?

A. No.

Mr. McConnell: That is all.

The Court: Is that all?

Redirect Examination by Mr. Seeley.

Q. Mr. Mendelsson, in testifying about other distributors, in connection with the so-called Chicago releasing system, did you know the terms of any contracts which any other distributors had for the licensing of their films?

A. No.

Q. Were you testifying merely from general knowledge which you had gained through the newspapers and other sources of common information in the city?

A. I don't understand.

Q. Well, what was the source of what you knew—

Mr. McConnell: Read the other question to him and let him answer it.

Mr. Seeley: I will withdraw the other question.

2390 Q. What was the source of what you knew about how other distributors played their pictures in various theatres in Chicago?

A. Well, it was general knowledge that a theatre that played in A week or, well, I will throw those out, but

C week, or first week or second week or later than that, we all knew where that theatre played.

Q. Everybody in the film business in Chicago knew?

A. Yes, the manager and the salesmen, all the bookers and so on, everybody had access to our contracts, knew exactly where that theatre played.

Q. Oh, you mean anybody in your company or—

A. In our office.

Q. Yes. Did any other distributor representatives have access to your contracts?

A. No.

Q. Or yours to theirs?

A. No.

Q. Any one who wanted to look it up in the newspapers and follow the newspapers for a while, could figure out in what week of release the theatre was playing, couldn't he?

2391 A. Any picture man who knew when the release date for the pictures was set, yes.

Q. Starting from the day it left the Loop and counting so many weeks?

A. Of course, I might answer your question more elaborately by saying this:

That a theatre very often might play Metro pictures in the first week of release and play somebody else's in the second, or it might play it in C week, it depended on how the contracts would run in that neighborhood.

Q. Have you any particular case in mind when you say that?

A. Yes. For example, say the Palace Theatre out on the west side, in the first week of release.

Q. Yes?

A. Well, the next theatre that followed would play in the second week of release.

Q. Yes?

A. But a company that did not sell the Palace Theatre would skip the Palace and sell the Annetta in the first week of release.

Q. I see.

2392 A. What I mean is, the Annetta might have Columbia pictures, for example, in the first week of release, and everybody else's, Metro's, or Paramount's, or somebody else's in the second week of release.

Mr. Seeley: I see. I think that is all.

Recross Examination by Mr. McConnell.

Q. Do you know of any of the Balaban & Katz theatres doing that?

A. I cannot recall one now.

Mr. McConnell: That is all.

Mr. O'Brien: I wish, in view of the witness's last testimony, to renew my motion to strike his understanding of what other distributors were doing.

The Court: The objection is overruled. Any further questions of this witness?

Mr. Seeley: You may step down.

(Witness excused.)

2393 WALTER E. BANFORD, a witness called on behalf of Loew's, Incorporated, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Seeley.

Q. State your name, please.

A. Walter E. Banford.

Q. Where do you live, sir?

A. 2440 Lake View, Chicago.

Q. By whom are you employed?

A. Loew's, Incorporated.

Q. In what capacity?

A. As resident manager of the Chicago territory.

Q. How long have you been employed in that capacity by Loew's?

A. You mean in Chicago?

Q. In Chicago.

A. Since about the first of June, 1938.

Q. And prior to that, how long were you employed by Loew's or its predecessor company in some other place?

A. Since ~~May, 1918~~.

Q. Before 1918, had you any experience in the picture business?

2394 A. Vitagraph, Lubin, Selig, Essenay, in Chicago.

Q. In what parts of the country were you between 1918 and 1938?

A. Salt Lake City, Denver, Seattle, Portland, Minneapolis, Des Moines, St. Louis.

Q. In your capacity as branch manager here in Chicago, do you have supervision over the licensing of Metro product in the Jackson Park and other theatres?

A. I have supervision over the sales, that is, the leasing of the Loew's product.

Q. Salesmen do it under you, is that correct?

A. That is correct.

Q. Do you recall, during the time between 1938 when you became branch manager, and July 28, 1942, having at that time called to your attention by any one that the Jackson Park Theatre wanted to play in an earlier run?

A. I do not recall so.

Q. Since you have been the branch manager here in Chicago, have you known of any understanding or agreement or plan or design between Loew's and other
2395 distributor to discriminate against independent distributors in Chicago or to license the Jackson Park only in first week of general release?

A. I do not.

Mr. Seeley: You may cross-examine.

Cross-Examination by Mr. McConnell.

Q. You have been present in the court room during the cross-examination of the two preceding witnesses, have you not?

A. Yes, sir.

Q. What are your duties as branch manager, Mr. Banford?

A. Supervise the sales in the office.

Q. Is that the whole Chicago office?

A. Chicago office, yes, sir.

Q. Do you have charge of the negotiation of the Loop deals?

A. That is generally negotiated through the district manager and the Western sales manager.

Q. Well, do you have anything to do with it?

A. Occasionally sit in on it.

Q. And the Loop deal and the Loop runs are nego-
2396 tiated before you go to work on the sales of your product, are they not?

A. Yes, sir.

Q. So that after those sales to the Loop theatres are

negotiated, you have before you a schedule of clearance which has been negotiated by the Loop runs?

A. Clearance as prevails with the Loop runs, is that what you mean?

Q. Yes.

A. Yes, sir, I know what it is.

Q. And with the Balaban & Katz situation you have always had a contract before the years in question here; in 1938 you came with the company, you say?

A. Came to Chicago with the company. I was previously here in—I left here in 1919 and at that time was with the company at Salt Lake City.

Q. Well, you were not dealing with this situation then until 1938?

A. That is right.

Q. And at that time you had before you a contract or a franchise which did not expire until 1941, with the
2397 Balaban & Katz Company, did you not?

A. We had a franchise at that time.

Q. And you knew about that franchise?

A. That is right.

Q. So that any salesman selling under your direction would not be free to offer product if it conflicted with the terms and provisions of that contract, isn't that the fact?

A. We would not be in a position to offer product different from the times as set up in the contract.

Q. That is what I mean. And the salesmen knew that, did they not?

A. The salesmen, well,—

Mr. Seeley: Well, I object to what the salesmen knew. Let him ask what he told the salesmen, if anything.

Mr. McConnell: Q. Well, did you have a selling plan? You have heard this testimony about a selling plan?

A. Yes, we have a selling plan. Each salesman is given an analysis of the account which he has and knows the territory which he covers.

Q. And he is also furnished with information about the sale of the prior run, is he not?

2398 A. Definitely so. The prior run is generally sold before we sell the subsequent run.

Q. It is always sold, is it not?

A. That is right. Yes, as a rule, I would say so.

Q. Now, did you know generally, in a general way about

the system of release here in Chicago when you were here before with the company, back in 1918?

A. No, I don't recall what system of release we had.

Q. Well, you left in—when, 1918?

A. 1918.

Q. When you came back in—

A. 1919, I left.

Q. You came back here in 1938?

A. 1938.

Q. Do you draw up the contracts for the different theatres which you have under your supervision?

A. The salesmen do.

Q. Do they do that under your direction and supervision?

A. Do they draw them up under my supervision?

Q. Yes.

2399 A. Well, they write up the contract, then after it is written up and negotiated, why, it comes to me.

Q. And you sign it?

A. That is right.

Q. So you are familiar with all those contracts?

A. I would say with the majority of them.

Q. And in all those contracts, you have a provision, do you not, that if the exhibitor exhibits product, and exhibits his show below the minimum admission price stipulated in the contract, he forfeits the run?

A. You say we have a clause in the contract?

Q. Yes.

A. Well, there is a minimum admission stipulated, and it has not been that the contract has always been forfeited.

Q. Well, is there a clause in the contract permitting you to forfeit it, that is what I want to know.

A. I believe so.

Mr. McConnell: That is all.

The Court: Do you folks have any questions of this witness?

Mr. O'Brien: I have a question.

2400 The Court: Mr. Adcock?

Mr. Adcock: No, I haven't any questions.

Mr. Seeley: Mr. O'Brien said he had a question.

The Court: Oh, I thought he said he had none.

Examination by Mr. O'Brien.

Q. Will you look at Plaintiffs' Exhibit 144 for identification and tell me if that bears your signature.

A. I don't see it anywhere on here. Here is the resident manager.

Q. Is he of your company?

A. E. M. Saunders, yes, he is.

Q. That bears the signature of Mr. E. M. Saunders on behalf of your company?

A. Yes, sir.

Q. I am referring to that contract within this exhibit which is dated September 22, 1927—

A. 1937.

Q. '37, I should say.

A. '37.

Q. And which relates to the sale of certain of the product to Warner Bros. Circuit Management Corporation, is that right?

2401 A. That is right.

Mr. Seeley: You will have to keep your voice up so that these reporters can hear what you have to say, Mr. Banford.

Mr. Adcock: And the jury.

Mr. Seeley: Yes, and the jury, of course.

Mr. McConnell: Can I see the document, please?

Mr. O'Brien: That is your own exhibit, Mr. McConnell.

Mr. McConnell: Well, I just want to see it.

Mr. O'Brien: Q. Did you personally negotiate the contract made with the Jackson Park Theatre for the season 1937 to 1938?

A. No, sir.

Mr. O'Brien: That is all.

Mr. McConnell: I haven't any more questions.

The Court: I guess that is all, Mr. Banford.

(Witness excused.)

2402 JOHN E. FLYNN, a witness produced on behalf of the defendant Loew's, Incorporated, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Seeley.

Q. Will you state your name, please?
A. John E. Flynn.
Q. Where do you live, sir?
A. 5300 block Sheridan.
Q. By whom are you employed?
A. Loew's Metro-Goldwyn-Mayer Pictures.
Q. For how long have you been employed by that company and its predecessor companies?
A. Twenty-six years last February 19th.
Q. Will you trace during those years, from that time until the present, the different positions you held and the different places where you have been located for the company?
A. On February 15, 1943, I assumed the general sales management of the Western Division, consisting of Chicago, West, Hawaii, and Alaska.
Q. What date was that, I did not—
2403 A. February 15, 1943.
Q. '43, I see.
A. Prior to that, the period from December 15, 1941, I was the general manager of the Central Division, comprising St. Louis, headquarters in Chicago, St. Louis, Pittsburgh, Detroit, Cincinnati, Cleveland, Chicago, Minneapolis, Indianapolis, Buffalo, Milwaukee.

From March, 1938, to December, 1941, I was the Chicago district manager, comprising Chicago, Milwaukee, Minneapolis, Detroit, Cleveland, Cincinnati.

Prior to that time, from February, 1927, to 1940, I was district manager, with headquarters in Detroit, covering Detroit, Cleveland, Cincinnati, Pittsburgh, Buffalo, and Albany.

For a period of probably four months, during the summer of 1937, I acted as district manager in Chicago, during Mr. Shirley's illness.

Prior to my Detroit assignment, I was located in the St.

Louis district. Prior to that, on the West Coast, and prior to that, in the home office in New York.

Q. Does that cover your entire experience in the film business?

2404 A. No, prior to my association with this company, I originally started thirty years ago with the Mutual Film Corporation in Omaha, for about a year and a half, and then for about a year and a half with General Film Company, with headquarters in Cleveland, covering Cleveland, Cincinnati, Columbus, and Pittsburgh.

Q. Now, during the periods you mentioned, when you had Chicago, either as your direct responsibility or as part of your territory, did you become familiar with the manner in which your company licensed various runs of its pictures in Chicago?

A. Yes.

Q. Can you state the reason why Loew's licenses the first runs in Chicago of its pictures to the large theatres located in the Loop, with high minimum admission prices?

A. Well, in order to obtain the most amount of revenue for your product and to protect it.

Q. Will you explain what you mean when you say to protect the product?

2405 A. Well, for instance the first runs, we feel is the best outlet for revenue, and in establishing minimum admission prices, you protect your product, not only for that run but also for the subsequent runs.

As an illustration, if the admission price, we will say, in a zone, first run, is 50 cents, and we put that as a minimum, the exhibitor may charge more, and sometimes does, but by maintaining that minimum, we feel we protect that product not only for that run but for the next run. Maybe the next run is charging 40 cents.

Now, if the prior run was not compelled, or if we were not protected for him to charge 50 cents, if he dropped to 40 cents, then the next subsequent run could not maintain the 40 cents admission. He would have to drop to 30 cents admission. So that I feel the minimum admission protects not only the first run but the subsequent runs.

Q. Is it the policy of your company to license pictures elsewhere than in Chicago in accordance with a series of runs and minimum admission prices for each run?

A. Yes, practically speaking, the same plan of

2406 release.

Mr. McConnell: I object. I tried to go into the

outside situation and had an exhibit here and offered it in evidence, and counsel said, "We don't want to go into that."

The Court: Well, let us stick to Chicago.

Mr. Seeley: Very well.

Q. Did you have anything to do with the negotiation of the Loew's franchise dated September 1st, 1936?

A. No.

Q. Have you had anything to do with subsequent negotiations between your company and Balaban & Katz for theatres here in Chicago?

A. Yes. After the franchise expired.

Q. Between September, 1941, and July, 1942?

A. Yes.

Q. What did you have to do with such negotiations during that period?

A. Well, my responsibility was largely the matter of negotiating the terms. Other factors were considered, partly detail, such as admission prices and matter of clearance was taken up, but probably there would be only
2407 one or two instances where there might have been some question as to the proper clearance, as to whether it was the proper clearance. If we did not think it was, then we wanted to correct it, and while I cannot specifically name all of the instances, I feel quite confident that there were some.

Mr. McConnell: Now, I object to this line of testimony.

Mr. Seeley: I think that probably goes beyond what my question called for.

The Court: You both agree on it.

Mr. Seeley: What I wanted to bring out was, in a general way, how much you had to do with the negotiations of the Balaban & Katz deal.

A. Well, it was largely the matter of terms.

Q. Yes. And some casual connection with clearances?

A. Yes.

Q. Is that what you say? Well, in connection with any of the negotiations which you had anything to do with, did you have any communication with representatives of any other distributor about the terms of your dealings?

2408 A. None whatsoever.

Q. Do you know of any understanding or agreement, common plan or design between Loew's and any

other distributor with respect to how Loew's pictures shall be sold and released in Chicago?

A. No.

Q. I have forgotten, in 1936 did you have anything to do with Chicago or not?

A. No.

Q. You were not here at the time, then, that double featuring was instituted in various Chicago theatres, about that time?

A. No.

Q. In your opinion, what, if any effect, would it have upon the revenue which Loew's is able to obtain from the licensing of its pictures in Chicago, if it did not license them in successive runs, beginning with exclusive runs in the largest theatres, working down through successive runs in the successively smaller theatres, and if you did not in connection with those licenses specify minimum prices in each run.

A. Well, unquestionably your revenue would suffer considerably, and you would only develop a very chaotic
2409 condition.

Mr. Seeley: I think that is all. You may cross-examine.

Cross-Examination by Mr. McConnell.

Q. On your statement about admission prices, fixing the admission price in each run, in order to maintain the admission price in the first run, you have got to maintain it all the way through, do you not?

Mr. Adcock: I object to that question.

The Court: What is the objection?

Mr. Adcock: On the ground he said, "Fixing admission prices." It is a question of minimum admission prices.

Mr. McConnell: Fixing minimum admission prices.

The Court: Put the word "minimum" in it. Do you understand the question now, Mr. Flynn?

The Witness: I believe so. The setting up of minimum admission prices in the first run has nothing to do with admission prices in so far as the subsequent run account is concerned, with the subsequent runs. It has noth-
2410 ing to do with the subsequent runs, unless it happens to be his own theatre.

Mr. McConnell: Read the question to the witness, please.
(Question read.)
The Witness: A. No.
Mr. Seeley: Do you understand the question, Mr. Flynn?
The Witness: Well, as I understand it, do you mean if you set up the minimum admission price for the first run, that then you have got to maintain that, go through a certain admission price for all the other runs?
Mr. McConnell: Yes.
The Witness: No, you don't.
Mr. McConnell: All right, let us see.
Q. Your minimum admission price here in the Loop is what?
A. Seventy-five cents, first run.
Q. And you want to protect that, you say?
A. Yes.
Q. And to protect it, what do you mean protect it from what?
A. Protect it from them reducing the price below
2411 that figure.
Q. All right. Are you protecting the theatre in the Loop?
A. We are protecting them and we are protecting our product.
Q. All right. Now, let us take the theatre that you are protecting. What are you protecting it from?
A. From reduced admission prices, which would be ruinous.
Q. All right. So you fix the price in the next run, don't you, so that it won't be below a certain amount?
A. We do that.
Q. You do that?
A. Yes.
Q. And that is for the purpose of protecting that 75-cent admission in the Loop, isn't it?
A. And also protecting the next run, because—
Q. Just a minute. Is it for the purpose of protecting the 75-cent admission in the Loop?
A. Primarily.
Q. Yes. That is what I wanted to get. And when you set an admission price of 50 cents in the A run, in
2412 order to protect that 50-cent admission price, you have to fix a minimum in the next succeeding run, don't you?

A. Yes, we do.

Q. And in order to get your 40 cents in your B run, you have got to fix a minimum admission price in the next one, don't you?

A. For each run.

Q. Yes, for each run. You sell your pictures in the Loop on a percentage basis, don't you?

A. Yes.

Q. So you are interested, along with Balaban & Katz, in what is taken out of the Loop box office, aren't you?

A. We are interested in our participation.

Q. You are interested in making the most money for your company you can, isn't that right?

A. That is right.

Q. And this chaos that you talk about, that simply means that the public might get pictures at a lower price, isn't that it?

Mr. Seeley: I object to that. He is making a statement instead of asking a question.

2413 The Court: I think that is more of a statement than a question.

Mr. McConnell: Well, I will withdraw it.

Q. What you mean by chaos is, isn't it, Mr. Flynn, that you would have theatres competing against each other on a matter of price, which would be chaotic from your point of view, because the prices would differ, isn't that correct?

Mr. Seeley: I object to that for the same reason.

The Court: What do you mean by "chaotic" condition, Mr. Flynn?

A. For instance, your Honor, if you do not have a minimum admission price to protect your product, and a man, at the time you are selling him, is charging 40 cents, and then for some reason or other he decides to cut that in half, to 20 cents or 15 cents or even 10 cents, it deteriorates your product and it wrecks the rest of your zone where you have other houses who want to maintain the 30 cents or 40-cent admissions.

The Court: That answers your question.

Mr. McConnell: Yes, that answers it. That is all.

Mr. Adcock: I haven't any questions.

2414 The Court: Mr. O'Brien?

Mr. O'Brien: No questions.

Mr. Seeley: You may step down, sir.

(Witness excused.)

The Court: Do you have a witness that is going to testify, a short one?

Mr. Seeley: Oh, sure, I have another witness.

The Court: All right. Put him on.

Mr. Seeley: Mr. Gorelick, take the stand, please.

2415 SAM GORELICK, called as a witness on behalf of defendant RKO Radio Pictures, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Seeley.

Q. State your name, please, sir.

A. Sam Gorelick.

Q. Where do you live, Mr. Gorelick?

A. 4944 North Christiana Avenue, Chicago.

Q. You are the same Mr. Gorelick, are you not, who gave a deposition in this case before the trial started?

A. I am.

Q. I do not know whether you know it or not, but your deposition has been read to the jury since then.

What is your present position, with whom are you employed, and what is your job?

A. I am Chicago branch manager of RKO Radio Pictures.

Q. How long have you been its branch manager?

A. A little better than two years.

2416 Q. And were you with the same company before that?

A. Yes, sir.

Q. What was your position before that?

A. Sales manager, Chicago sales manager.

Q. Also here in Chicago?

A. That is right.

Q. For how long?

A. Oh, about five years as sales manager.

Q. As sales manager, did you have anything to do with negotiating deals between RKO and Balaban & Katz or Warner Bros.?

A. No, I did not.

Mr. McConnell: Can you speak up just a little, I cannot hear back here.

A. I did not.

Mr. Seeley: Try to keep your voice up for the jury.

Q. Did you, as sales manager, have some supervision over the selling of some other accounts here in Chicago?

A. Yes.

Q. And since you have become branch manager, what contracts come within your responsibility?

2417 A. All contracts pertaining to the theatres in the Chicago territory.

Q. Your superior for many years was Mr. Osserman, was he not?

A. Yes, sir.

Q. And where is Mr. Osserman now?

A. In Rio de Janeiro, South America.

Q. At any time while you were acting as sales manager or branch manager for your company, prior to July 28, 1942, was it ever brought to your attention that the Jackson Park Theatre had requested a better playing position for RKO pictures?

A. It was not.

Mr. McConnell: What was your answer?

A. I did not.

Mr. Seeley: Q. You mean, "It was not"?

A. That is right.

Mr. Seeley: You may cross-examine.

Mr. McConnell: This witness I would like to cross-examine rather extensively, if the Court please. I wonder if we could adjourn at this time. I want to review his deposition.

The Court: You want to examine him quite exten-
2418 sively? He has only been asked a couple of questions.

Your cross-examination is pretty limited to the direct, isn't it?

Mr. McConnell: Well, if it is limited to those two questions, I would say yes.

The Court: Well, isn't that the rule?

Mr. Seeley: I think so.

The Court: I thought that was the rule, that cross-examination was limited to matter brought out on direct examination. If you want to call him as your witness, or something like that—

Mr. McConnell: No, I don't want to call him. I will go ahead with my cross right now.

Cross-Examination by Mr. McConnell.

Q. Mr. Gorelick, how long have you been a branch manager?

A. A little better than two years.

Q. And during those two years, have you had charge of the negotiation with the Loop theatres?

A. I was part of the negotiation.

Q. You were part of it?

A. That is right, I assisted.

2419 Q. Well, who else was in it?

A. Mr. Osserman, Mr. Branson.

Q. And yourself?

A. That is right.

Q. And when were those negotiations held?

A. Immediately after our Chicago or our New York convention.

Q. What time of the year would that be?

A. Somewhere around July.

Q. Right after that you negotiated the Loop runs, right?

A. As pictures became available.

Q. Well now, before you negotiate the Loop run, you have to agree with Balaban & Katz on clearance, do you not?

A. No, we negotiate our deal and the clearance in the same sitting.

Q. It is in the same sitting?

A. That is right.

Q. And the clearance would be for the clearance for the entire chain of the Balaban & Katz theatres?

A. The theatres that are concerned in our deal.

Q. And that would be all of the Balaban & Katz theatres, wouldn't it? There is just one clearance agree-

2420 ment?

A. Not quite.

Q. Well, the clearance agreements are in evidence here.

A. Well, we sell our pictures to Warner Bros. on the South Side. We don't sell the Tivoli, the Southtown, the Central Park and the Regal Theatres.

Q. That is true, but what theatres you sell to the Balaban & Katz chain, you agree on your clearance before you make any deal, isn't that correct?

A. We agree on the deal first, then the clearance.

Q. Well, you said it was part of the same deal.

A. That is right, I said in the same sitting.
Q. In the same sitting it is all agreed?
A. That is true.
Q. So the clearance for the chain is agreed in the sitting for the Loop run, right?
A. We don't sell the Balaban & Katz theatres downtown. We have our own theatre.
Q. All right, where do you sell them first?
A. We sell them to the Palace and the Grand Theatres, that is RKO theatres.
2421 Q. Now, you sell the A theatres for Balaban & Katz?
A. A theatres on the North and West Sides.
Q. Well, what theatres do you sell of Balaban & Katz, let us have them.
A. I will try to take them in order as I remember them. We sell the Uptown, the Marbro, the Granada, the Harding, the Riviera. Those constitute the—did I mention the Harding? They constitute the A runs.
Then, we sell the B runs which—oh, they are much too numerous to mention. I could not possibly remember them all.
Q. Well, you only have one clearance agreement, have you not?
A. Yes.
Q. Now, who negotiates them?
A. We do, at the time of the deal.
Q. And you say "We", you are included in that negotiation, are you not?
A. We? Myself?
Q. Yes.
A. Yes.
Q. So that your clearance agreement is signed at
2422 the time you first sell any pictures to the Balaban & Katz chain, right?
A. No, it is sold after—
Mr. Adcock: I object to that. It assumes something from what the witness has said.
The Court: I did not hear the objection. What is the objection?
Mr. Adcock: Well, it assumes a conclusion from something the witness said that is impossible, an improper assumption.
Mr. Seeley: May I have the question read?

Mr. O'Brien: Why he said that the agreement was signed for the clearance—the witness has not said anything about the signing of any agreement so far.

The Court: Well, is there any dispute about whether or not it was signed?

Mr. McConnell: He testified they signed—

Mr. Adcock: Your Honor, as I understand it, the clearance agreement is part of the agreement with respect to the licensing of pictures. It is all one agreement.

The Court: That is what the witness said.

2423 The Witness: That is correct, that is right.

Mr. Adcock: Then he asked the question, an assumption that the clearance agreement was made first, when they are all one contract.

The Court: The witness has said two or three times they were all made at the same sitting, is the way he put it.

Mr. Adcock: He has. He has answered that question several times.

Mr. McConnell: Will you read the question, please?

(Record read.)

The Witness: A. The clearance is set up after the deal has been set up.

Mr. McConnell: Well, you said it was part of the same deal.

A. That is true, in the same sitting.

Q. In the same sitting. And it is all one contract?

A. That is right.

Q. And the contract covers all the theatres which you sell to Balaban & Katz?

A. That is true.

Q. Now, that deal is negotiated by the branch
2424 manager or his assistant or whoever sits in with him, right?

A. No, sir, it is not.

Q. Well, who is it negotiated by?

A. The deal is negotiated by the district and the division manager and I am included in the deal.

Q. All right, who is the district manager?

A. We have a new man in Chicago now, Mr. Goldhammer.

Q. Mr. Osserman was the district manager?

A. That is right.

Q. And the division manager sat in on it too, is that it?

A. In the majority of the deals.

Q. And you sat in?
A. Yes, sir.
Q. As branch manager?
A. That is right.
Q. Now, after that deal is made, at that sitting you are talking about, then do you advise your subordinates as to the clearance provisions?
A. Oh, yes, and the contracts are drawn up accordingly.
Q. All subsequent-run contracts are drawn up accordingly?
A. In fact all their theatres are on one contract.
2425 Q. That is what I asked for a moment ago. They are all on one contract, aren't they?
A. That is right.
Q. And you have that one contract concluded before you do any business with any subsequent-run theatre?
A. That is true.
Q. So that after the conclusion of that deal, you advise your salesmen as to the terms of clearance which the Balaban & Katz chain has taken over the other theatres, is that right?
A. No, we usually advise the salesmen if there are any differences in clearance that might have come up.
Q. Well, then, you assume that they already know what the clearance is of the Balaban & Katz from the year before, is that correct?
A. That is correct.
Q. And unless there is some change, their instructions would be the same, would they not?
A. That is true.
Q. So that they know that Balaban & Katz in this
2426 first sitting has acquired clearance over the other theatres?
A. I would like to have you read that question.
(Question read.)
The Witness: A. That is correct.
Mr. McConnell: Q. That is correct?
A. Yes.
Q. Now, what clearance has the Balaban & Katz theatres taken over the Jackson Park?
A. The Jackson Park—
Mr. Seeley: I object to that as calling for contents of a contract, a document which is in evidence.

The Court: Oh, he can answer that question. Do you know the answer?

The Witness: Yes.

The Court: What is the answer?

A. That the Jackson Park is to play in first week of general release.

Mr. McConnell: Q. And that is provided in all their contracts with you, isn't it?

A. In the clearance setup.

Q. Now, who has charge of the salesmen that are going ous and selling the subsequent-run?

A. I have charge.

2427 Q. You have charge of it. So that when he goes out to sell the Jackson Park, the only thing you have to offer the Jackson Park is the first week of general release, is that right?

A. Yes, sir.

Q. And that is all you can sell him?

A. Yes, sir.

Q. And you tell your salesmen, right?

A. Right.

Q. And would it be unusual if your salesmen told that to the Jackson Park?

A. That I cannot answer.

Q. You do not know what the salesmen told the Jackson Park?

A. I couldn't answer.

The Court: Speak up, Mr. Witness. These ladies are trying to make a living writing down what you say.

Mr. McConnell: Q. You are, of course, familiar with the system of release here in Chicago?

Mr. O'Brien: Objected to, your Honor.

Mr. Seeley: Yes, I think it is outside the scope.

The Court: The objection is sustained.

Mr. McConnell: All right, that is all.

2428 The Court: Is that all of this witness?

Mr. Seeley: Yes, sir.

(Witness excused.)

The Court: All right, we will adjourn the case until tomorrow morning at 10:30.

(Whereupon the trial of the above entitled case was continued to Friday, March 3, 1944, at the hour of 10:30 o'clock a. m.)

1463 IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption)

Before:

Igoe, J., and J.

Friday, March 3, 1944,
10:30 o'clock a. m.

Court met pursuant to adjournment.

Present:

Mr. McConnell,
Mr. Korfist,
Mr. Adcock,
Mr. Goldberg,
Mr. Seeley,
Mr. O'Brien.

1464 The Court: Are you ready?

Mr. Seeley: Yes, sir. I will call Mr. Branson for RKO Radio Pictures.

The Court: Mr. Branson?

Mr. Seeley: Branson, yes sir.

WALTER BRANSON, produced on behalf of the defendant RKO Radio Pictures, Inc., having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Seeley.

Q. Will you state your name, please?

A. Walter Branson.

Q. Where do you live, Mr. Branson?

A. New York, Bronxville, New York.

Q. By whom are you employed?

A. RKO Radio Pictures.

Q. In what capacity at the present time?

A. Western division salesman.

Q. Will you go back to the beginning of your connection with the motion picture business and trace the various positions which you have held?

1465 A. I started in Omaha, Nebraska, in February, 1922, as a booker for the Pathe Films Exchange. I stayed there in that capacity for about two years, then

a salesman for a year, possibly a year and a half; I was made branch manager of Pathe at Omaha.

From there I transferred to Des Moines, Iowa, as branch manager for Pathe, where I stayed about a year and a half.

From there I transferred to St. Louis, Missouri, where I was branch manager for about nine months, and then was taken to New York as assistant to the general sales manager of Pathe, Mr. Ted O'Leary, and after being in New York for about ten or eleven months, possibly a year, I am not just sure, there may be a few days differences there, I transferred to Chicago as Branch manager 1466 at Chicago for Pathe. That was in October, 1930.

Q. And then, when was it that Pathe joined up with RKO and became RKO?

A. Well, the actual merger, I don't know the exact date of the legal transaction, but we were notified in New York, or in Chicago, in late 1931, about November.

Q. Did you continue to be employed by RKO in Chicago?

A. Yes, as the branch manger of the combined companies.

Q. And did you have any other position?

A. About a year later, a year and a half later, I was made district manager of RKO and Pathe.

Q. For how long did you hold that position?

A. I held that position until December 9, 1942.

Q. That is when you left Chicago?

A. To go to New York as Western Division salesman.

Q. When you left New York, to take up your duties in Chicago as branch manager for Pathe here, what did you learn or know about the revenues, which Pathe was getting out of Chicago, proportionate to what it was doing in other cities?

A. Well, the reason that we had made the change 1467 in Chicago, and the reason that I was sent here, was because we were very dissatisfied with the revenue we were getting out of the Chicago branch and—

Q. I think that answers the question; that is, in proportion to what they were getting elsewhere?

A. In proportion to what we were getting in similar branches.

Q. Now, when you arrived here as branch manager who was the district manager just above you?

A. Mr. Cresson Smith, of the United Artists had been appointed a few weeks before I arrived.

Q. He had just come from United Artists?

A. From United Artists, where he was district manager.

Q. Do you know what length of time Mr. Smith had been in Chicago?

A. I think around eighteen years. He was one of the oldest branch managers and district managers in the city of Chicago, in term of employment.

Q. When you arrived here to take up your duties, did you have discussions, with Mr. Smith?

A. Yes.

Q. Just don't tell what they were, just that you
1468 did have discussions. Now, aside from those discussions, what, if anything, did you do to acquaint yourself with different theatres in the city of Chicago and the way they played motion pictures in relation to each other?

A. Well, immediately upon my arrival, of course, I assembled the records of the branch, and then proceeded to spend each evening, or at least three or four evenings a week, driving over the city, seeing the various locations of the theatres so that I would become acquainted with the theatres here personally, rather than by hearsay.

Q. Among other parts of the city, did you drive around the South Side?

A. Yes, sir.

Q. And see the Avalon and the Jackson Park and the Jeffery?

A. I saw every theatre on the South Side.

Q. From the records of the branch which you got out, were you able to tell how Pathe had sold its pictures the previous season?

A. Yes.

Q. As a result of your discussions with Mr. Smith
1469 and your own investigations, that you have described, did you arrive at any conclusions as to why Pathe had not been getting more money out of the Chicago territory?

A. Yes, we did.

Q. What conclusions did you arrive at?

A. Well, first we found that RKO was selling, or Pathe was selling their pictures quite differently than other companies were selling them. I learned this information

from Mr. Smith, his having been here for years, he knew the situation much better than I did.

Q. Yes.

A. So, we immediately rezoned the whole city. We sat down and took each section of the city, and combined with his information, and the information that I had obtained in driving around and looking at the theatres, seeing the size and type, and from the information he gave me of the admission prices and the type of selling he had done with United Artists, which I understood had been very successful as distributors here, we reset the whole city, based upon the information that we had, and with the intent and purpose of increasing our rev-
1470 enue in the city of Chicago.

Q. When you say you "reset the city" tell the jury what you mean by that.

A. Well, in any particular zone, in some of the zones, RKO had only been selling two and three theatres, or Pathe, I am sorry I keep repeating RKO, Pathe had only been selling two and three theatres, where I discovered the United Artists, as an example, from Mr. Smith, had been selling four and five theatres.

The reason for that was partially, I found, on investigating and checking the theatres, that Pathe had been selling the Marks Brothers, and in selling the Marks Brothers they had to set the zones up differently than those who sold Balaban & Katz.

Therefore, we took each zone, and where we had been getting, say, two runs or three runs out of the zone, Mr. Smith would show me where United Artists would get four and five runs out of the zone. So, we reset it so that we would sell five runs rather than three, because Marks Brothers was no longer in business, and we had to find a way to reset the city, if I make it plain,
1471 and to increase our revenue.

Q. Now, had Pathe been selling pictures to Balaban & Katz before you got here?

A. Just a few pictures.

Q. When you set up this plan, was that before you started on to sell pictures for the season?

A. Yes, sir.

Q. Did you have any assurance at that time that you would be able to sell pictures to Balaban & Katz?

A. No, sir.

Q. And in setting up the plan, according to which you were going to try to sell your pictures, what theatres did you choose or select as outlets for the first outlying runs of Pathe pictures on the North and West Sides of Chicago?

A. Balaban & Katz.

Q. What theatres on the South Side of Chicago?

A. We sold Warner Bros. We not only sold them, but in setting up our plans, we were definitely convinced in our own minds that we should sell Warner's.

Q. Why were you so convinced?

A. Because the records showed that Warner's
1472 could use a great many more pictures at the Avalon and Capitol than we could possibly get out of Balaban & Katz, out of the Tivoli Theatre.

Q. And in this plan that you set up, did you select the customers which you would try to sell right down the line?

A. Yes, we set up a plan in advance of our intentions.

Q. What factors did you take into consideration in setting up the plan for these different theatres?

A. Well, the type of theatre, the size, seating capacity, general physical condition of the theatres, location, relation to drawing—our own estimation of drawing power, admission prices, and such information as Mr. Smith gave me or contributed, the film rentals that these fellows could pay, from his experience.

Q. Did you learn also fr[illegible] Mr. Smith where these theatres had been playing in the past, say, with United Artists' products?

A. Yes.

Q. In setting up this plan, in what week of release did you plan to sell the Maryland and Jeffery theatres?

1473 A. In C week release.

Q. And in what week of release did you plan to sell the Jackson Park Theatre?

A. First week.

Q. After this plan was setup, then did you start out to see what you could do in selling?

A. Yes, sir.

Q. Whom did you go to first?

A. Balaban & Katz.

Q. Did you succeed in making a deal with Balaban & Katz?

A. Yes, sir.

Q. And according to your plan, did you succeed in selling your first run on the South Side to the Warner Bros. theatres?

A. Yes, sir.

Q. For what theatres did they buy there?

A. They bought for the Avalon and Capitol Theatres.

Q. And did you sell the Maryland and Jeffery in C week?

A. Yes, sir.

Q. And the Jackson Park in first week?

A. First week.

Q. In general, were you successful in carrying
1474 out your revised setup for selling Pathe pictures?

A. I think, very successful.

Q. What effect did that have on Pathe's revenue that year as compared with the previous year?

A. Substantially increased.

Q. Have you continued to sell Pathe and RKO pictures in accordance with that same general plan ever since?

A. Yes, sir.

Q. Then, the following year, when RKO and Pathe merged, you continued here, as I understand it, and continued with the same selling plan?

A. That is right.

Q. Has it ever been brought to your attention at any time, from 1930 until you left here, that the Jackson Park Theatre wanted any different or better playing position?

A. Than first week?

Q. Yes, sir.

A. No, sir.

Q. In setting up this sales plan in 1930, did you consult or communicate with any other distributor in the city of Chicago?

A. No, sir.

Q. Did you then know or have you known at any
1475 time since of any agreements or understanding or common plan or design between your company and any other distributor with deference to how pictures should be licensed in Chicago?

A. No, sir.

Q. Or to discriminate against independent theatres, including the Jackson Park?

A. No, sir.

Q. You were here in 1936, then, when double featuring began in various Chicago theatres, were you not?

A. Yes, sir.

Q. Did you have anything to do with that double featuring starting?

A. No, sir.

Q. Did Balaban & Katz consult or communicate with you in any way before they decided to start double featuring in their theatres?

A. No.

Mr. Seeley: You may cross-examine.

Cross-Examination by Mr. McConnell.

Q. When did you first come to Chicago?

A. In 1930.

1476 Q. And that was the time that you proposed to make a change in your system of selling pictures?

A. Right at that time; yes.

Q. And you talked this over Mr. Smith, you say?

A. Yes, sir. He was district manager, my immediate superior.

Q. Now, Mr. Smith was familiar with the system of distribution of United Artists, you say?

A. Yes, other companies, because of his having worked for Metro before United Artists.

Q. He had been with United Artists and with Metro?

A. Right.

Q. And what other companies?

A. That is all.

Q. You say he was familiar with the other companies, what other companies?

A. I meant Metro.

Q. What?

A. I meant Metro.

Q. Just the two?

A. That is right.

Q. So that he put before you the plan under which Metro and United Artists were selling, is that it?

A. I am not sure that that was exactly it. He gave

me the plan which he felt would increase the revenue
1477 of Pathe pictures.

Q. Well, did he tell you what the plan of RKO and United Artists was?

A. Well, RKO he could not tell me, because he had nothing to do with it.

Q. I mean Metro.

A. He did not tell me that that was their plan, he merely sat down and said, "This is the way we can get the most money out of the zone, in my opinion."

Q. But he knew about the plan of those two companies?

A. I have to assume that he did.

Q. All right. Now, as I understand from your testimony, prior to 1930, you had been setting your selling plan up in accordance with the request of the Marks Brothers, is that right?

A. No.

Q. Well, what did the Marks Brothers have to do with it then?

A. That fact that you sold them meant that the theatres that followed them would play in a different position than if they followed the Balaban & Katz theatres.

Q. In other words, if you were selling the Marks
1478 Brothers theatres, you would accede to the request for clearance which the Marks Brothers made over other theatres?

A. Yes.

Q. What if you were selling Balaban & Katz; you would have to accede to the demands for clearance of Balaban & Katz?

A. No, no, you would not have to accede to it if you did not want to.

Q. Well, if you wanted to sell the pictures to Balaban & Katz, you had to agree with them on a clearance schedule, didn't you?

A. Yes.

Q. You could not sell any pictures to Balaban & Katz until you had come to some agreement with them on a clearance schedule?

A. Clearance was always part of the deal.

Q. And it was a very essential part of the deal, too?

A. Yes, sir.

Q. And you could not sell them anything until you came to an agreement on that point, isn't that right?

A. Correct.

1479 Q. And United Artists and Metro had been selling Balaban & Katz pictures prior to 1930, had they not?

A. I don't know about Metro, but I do know about United Artists.

Q. And they had?

A. Yes.

Q. So that when you wanted to get the Balaban & Katz business, you decided that you would, as you say, reset the city, is that correct?

A. Rezone.

Q. Rezone it. Now, the first time that you came here that the zoning was discussed with Balaban & Katz, who was present in that conference?

Mr. Seeley: He did not testify that zoning was discussed with Balaban & Katz.

The Witness: I did not say that I discussed zoning with Balaban & Katz.

Mr. McConnell: All right.

Q. When did you first talk about clearance with Balaban & Katz?

A. When Mr. Smith and myself called on Mr. Max Balaban.

Q. And that was when?

1480 A. About thirty to sixty days after I arrived here.

Q. And after you had gone over this plan of yours with Mr. Smith?

A. Correct.

Q. And after you had reviewed that, you went around to see Mr. Balaban, is that correct?

A. Yes, sir.

Q. Did you discuss clearance with Mr. Balaban at that time?

A. Yes, sir.

Q. And Mr. Balaban gave you a schedule of clearance, didn't he?

A. He did not.

Q. Did he tell you what his schedule was?

A. We discussed each situation in reference to each theatre, in reference to its position, what we wanted it to play, and tried to convince him that that is the way it should play.

Q. And the net result of your discussion was that you reached an agreement on clearance?

A. Yes, by situation.

Q. Well, by situation or not by situation, you reached an agreement on clearance?

A. That is right.

1481 Q. Of the whole Balaban & Katz chain, is that correct?

A. By situation.

Q. And you met whatever requests or desires that Mr. Balaban might have with reference to clearance for his chain of theatres, did you not?

A. Not entirely.

Q. All right, what didn't you meet?

A. He wanted the pictures against the Twentieth Century Theatre on Roosevelt Road, with clearance over the Twentieth Century, and we refused to give it to him.

Q. Had you been selling the Twentieth Century prior to that time?

A. Occasionally. We also

Q. Is that the only difference-you had between you?

A. No.

Mr. Adcock: He had not finished his answer.

Mr. McConnell: Well, let him finish it.

The Witness: I started to add another theatre when he asked about. I know there was considerable discussion regarding the South Side.

Q. Who was present in that conversation?

A. Mr. Cresson Smith, Mr. Max Balaban, and myself.

1482 Q. And your first negotiation for clearance lasted for what period of time?

A. Oh, I would say two and a half, three hours.

Q. And how long did the agreement which resulted from that last, for what period of time?

A. For the current season's product.

Q. For a year?

A. Yes.

Q. Did you discuss with him minimum admission prices for each theatre?

A. Yes.

Q. And what minimum admission prices did you agree to?

A. I could not tell you, it has been fourteen years ago what the minimum admission prices for each theatre were

Q. Well, were they any different from what they are now?

A. I am not sure.

Q. But you discussed that and came to an agreement on it and put that in your clearance agreement, is that right?

A. I don't think there was any clearance agreement written.

Q. You mean that there was not any agreement at 1483 all in writing?

A. There was no written agreement.

Q. Well, what did you use as a basis for putting the clearance provisions in the different contracts?

A. The admission prices were not put in, but the week of release was put in the contract.

Q. But you had understood and you had an agreement on the admission prices, you said?

A. Yes, yes.

Q. So that you did have before you what you might call a clearance letter?

A. No.

Q. Well, what did you have before you?

A. I had the contracts.

Q. You had the contracts, and you also had data which you used as a basis for making up the contracts, didn't you?

A. Yes, the terms of each picture.

Q. And you had the terms of clearance, didn't you?

A. Not written.

Q. That was just an oral understanding between you and Mr. Balaban?

A. Yes, sir.

1481 Q. Now, when did you first make a written agreement with Balaban & Katz?

A. I don't recall that one ever was made. Are you talking about clearance?

Q. Yes.

A. I have never made a written one to my knowledge.

Q. You never have?

A. No, sir.

Q. I show you a document which has been introduced here in evidence as Plaintiffs' Exhibit 77, and I ask you to examine that document.

Mr. McConnell: Q. Do you still say you never signed a written clearance agreement?

A. I did not sign that.

Q. Well, do you still say your company does not sign them?

A. I have never signed one.

Q. Who signs for your company, if you know?

Mr. Seeley: I object to that. He stated as far as 1485 he knows, it was not signed.

The Court: Well, he said, "Who signs?" Let us put the question: Did anybody sign for the company?

Mr. Seeley: Counsel has it here and there is not any signature for RKO. Now, that is the net of it.

The Court: Well, the objection is sustained.

Mr. McConnell: Well, these contracts were produced by counsel and stated to be true copies of the original documents which were signed on the date which the copies purport to bear.

The Court: Well, there is no signature on there.

Mr. McConnell: Well, they are stated to be produced from their files as true copies.

The Court: True copy of what?

Mr. McConnell: There is a signature on here for Balaban & Katz, and it comes from RKO Picutres Corporation file.

Mr. Seeley: Does it?

The Court: I understand Mr. Seeley represents RKO. That is not the one he was talking about.

Mr. Seeley: I produced it out of our files, and it is what it is, a paper signed by Balaban & Katz and not 1486 signed by RKO.

The Court: You produced it from your files?

Mr. Seeley: I will take Mr. McConnell's word for it. Whether it came from ours or Balaban & Katz's file, I do not know, but if he says I produced it, I will have to take his word for it.

Mr. McConnell: Q. Who has charge of the files at your office?

A. I would not know today. There has been so many changes, I could not tell you who is in charge of them.

Q. Well, who is in charge of them today?

A. I do not know.

Q. You are now in New York?

A. Yes, sir.

Q. And who is your branch manager here now?
A. Mr. Gorelick.
Q. Well, after seeing this document will you still say that your company does not execute written agreements as to clearance with Balaban & Katz?
A. I have never signed a written agreement, representing RKO, with Balaban & Katz for clearance.
Q. And you are speaking of yourself personally?
1487 A. Or any one in the office to my knowledge.
Q. Now, you say you made a research—
A. I said I made a survey, not a research.
Q. Or a survey, of the different theatres when you first came to Chicago. What did you do?
A. I drove from one end of the city to the other, and stopped a short time in front of practically every theatre in the city.
Q. Did you find out what the minimum admission prices were?
A. At the time, yes.
Q. Did you find out what playing positions they had?
A. At that time, yes.
Q. Now, when did the Marks Brothers go out of business?
A. Shortly before I came in.
Q. '27, '28 or '29?
A. I think about '29, if my memory serves me.
Q. And Balaban & Katz had acquired their theatres at that time?
A. When I arrived, Balaban & Katz were operating the theatres, they may not have on the day I arrived, but when I went to sell them they did.
1488 Q. Well, what is your best recollection about it?
A. My best recollection is, when we finished the survey, which was about thirty to sixty days after I arrived here, those theatres were operated by Balaban & Katz.
Q. Now, after your first setting up or resetting the city, as you stated, did you make any changes in clearance so far as Balaban & Katz were concerned?
A. I wouldn't know what the clearance was before I came here.
Q. I am not talking about before you came; I say, after you reset it, in your first conference did you make any change after that?

A. You mean during the last fourteen years?
Q. Yes.
A. Without checking the records, I would not want to state.
Q. Well, in the subsequent negotiations, you had before you your prior clearance arrangements, did you not?
A. Prior with whom?
Q. Balaban & Katz.
A. No.
Q. You had information available to you, did you not, as to what the clearance was in the preceding year?
1489
A. No, because Pathe had not sold them.
Q. All right. You sold them when you first came to Chicago, didn't you?
A. Yes, sir.
Q. In the following or succeeding season?
A. Yes, sir.
Q. You knew what you had sold the year before?
A. The year before what?
Q. In the succeeding season.
A. Are you talking about—
Q. Let us start with one season, let us get ourselves straightened out.
A. All right.
Q. You came here in 1930?
A. Right.
Q. And in 1930 you sold for the '30-'31 season; didn't you?
A. Correct.
Q. And you came to some arrangement with Mr. Balaban, oral or written, or some way about the clearance?
A. Correct.
Q. And that clearance run for one year?
1490
A. Yes, sir.
Q. Expired with the playing season of '31?
A. '31, '32—correct.
Q. What time of year did you negotiate them?
A. You mean the first contract?
Q. The first contract.
A. In November ~~or~~ December.
Q. Of what year?
A. Of 1930.
Q. 1930?

A. Right.

Q. And when did that expire?

A. I would not know without checking the records.

Q. Those records are not available to you personally now, you are not here in this office?

A. That is correct.

Q. You have no independent recollection?

A. Well, you are asking a difficult question, because the termination of the contract is ended upon the last availability of the pictures released from our last run downtown, so I cannot say whether it is ten months, twelve months, or fourteen months.

Q. In other words, your clearances cover all the products which were covered under that clearance?

A. That is right.

Q. And it might be played in that year or played
1491 in some subsequent year, is that your position?

A. Yes, it might be a few weeks or months beyond the twelve months.

Q. And the clearance could not run on the pictures which had not yet been played?

A. That is correct.

Q. But you did each playing season negotiate a clearance agreement?

A. Yes, sir.

Q. Regardless of whether or not all the product had been played under the preceding one, is that correct?

A. I just don't understand that question.

Q. You negotiated a contract in December, 1930, did you?

A. That is right.

Q. When did you negotiate the next contract?

A. Approximately the same time the following year.

Q. Do you know that is the date, or is that your recollection?

A. That is my recollection. Of course, it varied, based upon the first run and the availability of subsequent runs. To give the exact date would be extremely difficult, without checking the record.

Q. You sold your Loop first run, did you?

1492 A. At our own theater, yes. In the case of Pathe, no. It was not our own theater, but we sold the State-Lake and the Palace Theatre first.

Q. The State-Lake was owned by whom?
A. R-K-O.
Q. The Palace was owned by whom?
A. R-K-O.
Q. What was your first Balaban & Katz theatre which you sold?
A. The north side "A" houses.
Q. The north side "A" house?
A. Right.
Q. Next to your own theaters, that was the biggest run that you had?
A. Yes, sir.
Q. Before you could put any product in those "A" houses, you had to have an agreement with Balaban & Katz on your clearance, didn't you?
A. Yes, sir.
Q. And you went to them first of the others outside of your own theater, did you not?
A. Yes, sir.
Q. You made your deal with Balaban & Katz first?
1493 A. Yes, sir.
Q. And in those deals you had contracts which covered the clearance over all other theaters which were competing with Balaban & Katz, is that correct?
A. We had an understanding as to clearance.
Q. You term it "understanding"?
A. Yes, sir.
Q. And told Mr. Balaban that you would observe the understanding, did you not?
A. Yes, sir.
Q. You didn't intend to violate the understanding?
A. Right.
Q. So that after you had come to that understanding, you could not sell any other theater on a different basis without violating the understanding, could you?
A. Correct.
Q. And you had made that understanding prior to the time that you dealt with any other theater?
A. Yes, sir.
Q. Now, in the succeeding periods, you understand what I mean by that, do you not?
A. You mean the years following?
Q. Years following.

1494 A. Yes, sir.

Q. You had before you your understanding of the previous year as to clearance with Balaban & Katz?

A. I had it in my mind, yes, sir.

Q. That is before you, isn't it?

A. I don't know whether you want it written or in my mind; it was in my mind.

Q. I want to know what you had before you when you were considering your deal.

A. That is correct.

Q. You had no misunderstanding about it, you and Mr. Balaban?

A. I knew what the clearance was.

Q. Yes; you knew what it was, so that when you made your next deal, you came to some understanding with Mr. Balaban, or with Balaban & Katz for that year?

Mr. Seeley: I object to that. He has answered he cannot recall whether it was exactly the same or not.

The Court: Q. Do you understand the question?

A. Yes, I do.

The Court: Q. Can you answer it?

A. No, I can't, because I don't recall. I stated
1495 that before.

Mr. McConnell: Q. Now, you came to an agreement, also—we won't call it an "agreement" if you don't like that term, call it an "understanding"—as to your admission prices?

A. Yes, sir.

Q. And you had come to that understanding in your first discussion with Mr. Balaban?

A. That is correct.

Q. Did you come to any understanding with him as to what admission prices you were going to charge similar theaters and similar runs?

A. Similar theaters? You mean opposition theaters?

Q. Yes; theaters which completed with Balaban & Katz?

A. Well, he had no jurisdiction over the opposition if we sold him the product.

Q. I didn't ask you that. I asked you if you had come to any understanding with him?

A. No.

Q. You did, however, charge the competing theaters—I will withdraw that.

1496 You did, however, provide in your contracts with competing theaters minimum prices, minimum admission prices for different runs, did you not?

A. Yes, sir.

Q. And the minimum admission prices were the same as those which you had agreed upon with Mr. Balaban?

A. No, sir.

Q. They were different?

A. Yes, sir.

Q. All right. Let us see if they were. The "A" runs, the minimum admission price was 50 cents, was it not?

A. Then I misunderstood your question. He didn't control what I was to charge anyone if I didn't sell him the pictures.

Q. I didn't ask you that.

A. Then I misunderstood the question. Ask the question again.

Mr. McConnell: Read the question.

(Question read.)

Q. I mean the minimum admission prices for competing theaters?

A. Yes, theaters covered by the clearance, yes.

Q. They were the same?

1497 The Court: Answer, Mr. Witness. These reporters can't get your nod.

A. I am sorry.

Mr. McConnell: Q. The answer was "yes," is that right?

A. Yes, sir.

Q. Now, you say that after you reached this agreement with Mr. Balaban, your revenue began to go up?

A. After we had made the deal, yes, for the clearance.

Q. Now, when you decided to reset the City here, did you talk to anybody from the Jackson Park about it?

A. No.

Q. Did you make up a chart of the different runs, different theaters?

A. I made up a schedule, yes.

Q. All over the city?

A. Yes, took each zone and made notes on scratch paper.

Q. And with the minimum admission prices for each theater?

A. For each week of release, yes.

Q. That was available to your office force, was it, 1498 that data?

A. Yes, it would be available to the salesmen, as I gave them instructions how I wanted the product sold, they would sell.

Q. You watched the play dates of the different theaters to see when they are playing the product?

A. Now?

Q. Then, I am talking about.

A. Yes.

Q. You watched that and checked it from time to time?

A. Not all theaters; the principal theaters.

Q. The principal theaters and checked that?

A. Yes.

Q. And what week of release?

A. Yes.

Mr. McConnell: I think that is all.

The Court: Mr. Adcock, or Mr. O'Brien?

Mr. Seeley: No further questions.

Mr. McConnell: I want to ask him one more question.

Q. I show you a document marked Plaintiffs' Exhibit 81, introduced in evidence here as Plaintiffs' Exhibit 81, and I call your attention to the typewritten portion 1499 there referring to a clearance letter: Do you note that?

A. Yes, sir.

Q. Does that refresh your recollection about clearance and clearance provisions?

A. Refreshes my memory that I didn't sign any agreement for clearance.

Q. It refers to a clearance letter, doesn't it?

A. Yes; which I refused to sign.

Q. But you made a contract on the basis of it? Isn't that a contract between your company and Balaban & Katz?

A. Yes, sir.

Q. Read that provision in there about clearance.

A. "Clearance and other provisions are detailed in letter dated March 3, 1937."

Do you wish me to read further?

Mr. McConnell: That is all right. That is enough.

The Court: Is that all?

Mr. McConnell: That is all.

Mr. O'Brien: I have got one question.

Examination by Mr. O'Brien.

Q. Do you know if R-K-O did sell the Jackson Park product?
A. Do I know if they did?
Q. Yes.
A. Yes, sir.
Q. Do you remember that the Jackson Park took clearance over the Hamilton?
A. Yes, sir.
Q. And you had an agreement with the Jackson Park whereby it was able to do that, didn't you?
A. Yes, sir.
Q. You lived up to that agreement, too, did you not?
A. Yes, sir.
Mr. O'Brien: That is all.
The Court: Is that all?

Recross Examination by Mr. McConnell.

Q. What agreement are you referring to now, written agreement?
A. Agreement as to clearance; it was on the base of the contract with the Jackson Park.
Q. You are referring to the agreement which was in the contract itself?
A. Yes.
Q. No other agreement?
A. No.
Mr. McConnell: That is all.
The Court: Call the next witness.

SIDNEY ROSE, called as a witness on behalf of defendant Vitagraph, Inc., et al, having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. O'Brien.

Q. What is your full name?
A. Sidney Rose.
The Court: You will have to speak louder than that.
A. Sidney Rose.

Mr. O'Brien: Q. Where do you live?
A. 2756 North Pine Grove.
Q. By whom are you presently employed?
A. United Artists Pictures.
Q. Were you formerly employed by Vitagraph, Inc?
A. Yes.
Q. In 1935 and continuously from that time to 1939, were you a salesman for Vitagraph Pictures?
A. Yes.
Q. As salesman, did you work under Mr. Gilliam, among other branch managers, for Vitagraph, Inc.?
A. Yes, sir.
Q. What is the business of Vitagraph, Inc.?
A. The sale and distribution of pictures.
Q. And whose product was it selling and distributing during the time I have mentioned?
A. Warner Brothers pictures.
Q. Will you tell us, briefly, what your duties were as salesman in the years 1935 to 1939?
A. I was south side salesman for Warner Brothers, sold all houses on the south side.
Q. How many accounts did you have out there?
1503 A. I had ninety accounts, around ninety accounts.
Q. Were there any small circuits amongst those accounts?
A. Yes, sir.
Q. Will you name some of them?
A. The Van Nomikos Circuit, Joe Stern Circuit, Goodman & Harrison Circuit.
Q. Had any of these accounts been licensed to play in any earlier runs than "C" week at the time you had become a salesman, that is, by Vitagraph?
A. No.
Q. Had some of them been licensed by Vitagraph to play its product in "C" week?
A. Yes.
Q. Going on with your duties, was it a part of your duty to sell, or to license the Vitagraph product to these south side accounts?
A. Yes, sir.
Q. And how did you go about that?
A. I would go to the various theaters assigned in my zone to negotiate a contract for the coming year.

Q. Let me ask you, first, before you went, did you have any directions from your branch manager?

A. Yes. Prior to any selling season, we would go
1504 over each individual situation and figure just about what we should receive in film rentals, from that situation.

Q. Did you have any further directions from the branch manager which you can recall?

A. None outside of, if we could get, make agreeable prices, mutually agreed upon with the exhibitor, then there was no change in clearance.

Q. What, if anything, was said about the run in which the pictures might be licensed?

A. I could only sell the pictures as salesman that the run had previously been.

Q. Did that direction, was that a general direction, or was it applicable only to you?

A. No; that was a general direction to all salesmen.

Q. When you went out to sell those accounts, did you visit them indiscriminately, or did you start at the bottom, or top, or how did you go about it?

A. No. I set my zone up according to the playing position of the various houses. In the 90 accounts that were assigned to my zone, I think there were about five or six houses playing in the "C" week of release, and I would
endeavor to close those houses first, because the pic-
1505 tures became available to those houses first. I would then go down the line according to the way the playing position was of that situation.

Q. As you visited those accounts, if any should ask for a better playing position, what, if anything, would you do about it?

A. I would not be able to negotiate a deal. I would come back to the office, probably the next day, these were usually in the evening, and take that request up with my superiors.

Q. Suppose that such a request had been made and you had, nevertheless, negotiated a deal in the same position as you had previously sold, did you take that up with your superiors?

A. If I closed the deal?

Q. Yes.

A. No.

Q. But, if the account refused to buy in the same position and wanted a better one, you would take it up?

A. With my superiors.

Q. Now, you did, then, make reports on some of these occasions to your branch managers or superiors?

1506 A. Yes, sir.

Q. Were those reports all oral or in writing?

A. I made out a daily sales report of the accounts that I had called on the previous evening, or the previous day.

Q. Tell the jury, in a general way, what would be the subject matter of those reports.

A. Just what transpired between the exhibitor and myself; if I couldn't make a deal, why, I couldn't make a deal, and what came up that stopped me from making a deal.

Q. Now, in the case of the Jackson Park, do you recall that account?

A. Do I recall that account?

Q. Yes.

A. Yes.

Q. Who did you deal with at that theater?

A. Mr. Salkin.

Q. Is that Mr. Richard Salkin?

A. Yes, sir.

Q. Is that the first time you met Dick Salkin, when you became connected with Vitagraph?

A. No, I have known Dick Salkin all my life.

Q. You were friends?

1507 A. We were practically raised together, a couple blocks from each other.

Q. All right. Now, did you have a talk with Mr. Salkin about the sale of products for the 1939-1940 season?

A. I believe I did.

Q. Did Mr. Salkin at that time ask you, or tell you, that the Jackson Park wanted to play pictures in "C" week?

A. No, sir.

Q. Did you or did you not conclude a deal with him for pictures in the first week?

A. I did.

Q. During any of that time that you were acting as a salesman, did Mr. Salkin ever request that he be permitted, or the Jackson Park be permitted to play in an earlier week?

A. No, sir.

Q. If such a request had been made under the circumstances which I have mentioned, would your written report have contained any information or note of that, the written report?

A. My daily sales report would show it, yes.

Q. Do you remember whether the Jackson Park
1508 bought any substantial part of the 1936-1937 product of Vitagraph?

A. I don't think we were able to make a deal for the season of 1936-1937.

Q. Did you try?

A. Yes, sir.

Q. On one occasion, or on frequent occasions?

A. I would say on very frequent occasions.

Q. And during the time that your 1936-1937 product remained unsold, did Mr. Salkin say anything about the 1937-1938 product?

A. After a few, a certain number of pictures were released, I finally tried to sell Mr. Salkin. I believe in trying to make a deal for the balance of 1936-1937, Mr. Salkin wanted to tie the two in together, the balance of the 1936-1937 and make a deal for the 1937-1938.

Q. In first week, or "C" week?

A. In first week.

Q. What happened, what did you say to him?

A. I refused to, because I didn't know what pictures we were going to have, I didn't know what terms we were going to have, I knew nothing about the 1937-1938 year.

1509 Q. Before you would go out to sell, you would have a discussion with the branch manager to see what you were going to request in the way of film rentals for the different pictures which you were offering?

A. Yes, sir.

Q. Had you had any such conversation about the price in respect of the 1937-1938 product at the time I am speaking of?

A. No, sir.

Q. You didn't even know how many pictures you were going to make, as I understand?

A. That is right, I didn't know anything about it.

Q. Did you this morning look at some of your daily sales reports over the year 1936-1937?

A. No.

Q. 1937-1938?
A. No.
Q. Were you in your office when I looked at them?
A. (No response.)
Q. Will you look at these documents and tell me whether they are daily sales reports?
A. Yes, sir.
Q. Did you see them in your office this morning?
A. Yes, sir.
1510 Q. Is there any question about it?
A. You asked if they are mine.
The Court: He asked you if you saw those,
A. Yes.
Q. Did you ever see those papers before?
A. Certainly.
Q. That is what Mr. O'Brien asked you.
Mr. O'Brien: Mr. Levinson and I were talking to you about it?
A. This is a different company; I was thinking of a different company.
Q. You were thinking of United Artists?
A. The present company I am working for.
Q. The documents I am showing you are Vitagraph.
A. When I was with Vitagraph.
Mr. O'Brien: I am sorry.
Q. On many occasions when you were trying to sell products for the seasons 1936-1937, 1937-1938, 1938-1939, did Mr. Salkin tell you that Mr. E. I. Bloom was the owner of the property, and that he would have to wait for his return because he was out of the city?
A. Yes, sir.
Q. And did you so note on your sales reports?
1511 A. I reported on my sales report everything that took place during our discussion.
Q. Did you sometimes refer to him as Ike Bloom?
A. I believe I always have; "I. Bloom."
Q. When you were negotiating for the sale of the 1938-1939 product, did Mr. Salkin tell you, on July 7, 1938, that it was too early for him to make a deal?
A. If that is what my sales report says, it is the truth.
Q. Anything which you have noted on these sales reports, you would say is correct at the time you made it?
A. Yes, sir.
Q. Now, do you remember that on February 22, 1937

you talked to Mr. Salkin, and that he told you that he just started double-featuring, and that you were working on a deal, but that Mr. Salkin said he was not sure whether they would have a single or double-feature policy?

A. I remember something, in the change of that double-single feature, that he probably said that.

Mr. O'Brien: Mark these as Warner Exhibits 4 and following.

1512 (Documents marked Warner Exhibits 4 to 10, both inclusive, for identification.)

Mr. O'Brien: Q. Will you look at the documents which I have had marked Warner Exhibits 4 to 10, respectively, for identification, look at them quickly and tell me whether they were all prepared by you on or about the respective dates which they bear?

A. These are mine (indicating).

Q. Those in typewriting, did you type them, or dictate them?

A. I typed them myself.

Q. Are there any of these reports, Mr. Rose, which give any indication of any discussion while you were a salesman, with Mr. Salkin, in respect of the Jackson Park's playing in "C" week?

Mr. McConnell: I object. The documents will speak for themselves.

Mr. O'Brien: All right. I have no objection to offering them all. I asked that question subject to your right to examine these documents, which I tender to you; but, if you want me to offer them, I will put them all in.

1513 The Court: What do you say? Do you want him to offer the documents, or will you look at the documents?

Mr. McConnell: I think it is all right. I don't want to encumber the record. I want to cross examine on them.

Mr. O'Brien: You will have a right to.

A. (No response.)

Q. Mr. Rose, in 1939, I believe you went to Omaha, did you not?

A. That is right.

Q. For Vitagraph, Inc.?

A. For Vitagraph, Inc.

Q. In what capacity?

A. Branch manager of Omaha.

Q. You continued there in that capacity for how long?

A. November, 1940.
Q. And came back to Chicago, then?
A. Right.
Q. As branch manager here?
A. Chicago branch manager.
Q. And you continued in that capacity until when?
A. April, 1942.
1514 Q. Was it at that time that you left Vitagraph?
A. That is right.
Q. By the way, do you know whether United Artists licensed the Jackson Park in first week?
A. Whether they did?
Q. Yes.
A. Yes, they do.
Q. Does United Artists operate, own or operate any theaters on the south side of Chicago?
A. They do not.
Q. Or anywhere else in Chicago?
A. They do not.
Q. Now, while you were branch manager for Vitagraph here in Chicago, did you ever talk with Mr. Salkin about a change of the playing position of the Jackson Park?
A. Yes, I did.
Q. Was anybody present on that occasion other than you and Mr. Salkin?
A. Yes, there were.
Q. Who?
A. Edward Mager.
Q. Approximately when was that?
A. November or December of 1940.
1515 Q. And what was said in that discussion?
A. Mr. Salkin requested "C" week of release for the Jackson Park Theater.
Q. What did you tell him?
A. I told him we had sold, or were selling the Jeffery Theater, our own theater, in the "C" week of release with clearance on the Jackson Park.
Q. Was there any further conversation about it?
A. None that I recall.
Q. Did the Jackson Park buy Vitagraph product for the season 1940-1941 in the first week?
A. Yes, they did.
Q. Aside from that conversation, did you have any

other conversation about an earlier run for the Jackson Park, with Mr. Salkin, or with anyone else?

A. No, sir.

Q. You were not working for Vitagraph, Inc. in 1936 when there was a resumption of double features?

A. I was working for Vitagraph.

Q. At what time, during the whole year?

A. Yes, sir.

Q. Do you recall whether Balaban & Katz made any request of you—well, let me see, this is 1936—I am having trouble remembering dates.

1516 You were salesman?

A. I was salesman in 1936.

Q. You didn't sell Balaban & Katz?

A. No.

Q. And had nothing to do with the Balaban & Katz account at all?

A. None whatsoever, nothing.

Q. Merely with the small circuits which you have mentioned?

A. Ninety accounts that I had on the south side.

Q. During the time that you were at Vitagraph, Inc. did you have any knowledge of any conspiracy by which Vitagraph, Inc., in combination with any of these defendants, or anyone else, sought to discriminate against the Jackson Park, or other independent theaters, in favor of the affiliated exhibiting houses?

A. None that I know of.

Q. Did you, yourself, in any of your dealings as branch manager, have any understanding with any other distributor, or exhibitor, as to the playing position which the Jackson Park was to have, other than the provisions which you may have made in contracts with specific exhibitors?

A. None whatsoever.

1517 Mr. O'Brien: You may cross examine.

The Court: We will take a recess for ten minutes.

(Whereupon, a recess was taken.)

1518 Mr. O'Brien: I will offer in evidence on behalf of Warner's the instruments marked 4 to 10 for identification, respectively; and I limit the offer, to shorten the record and for other reasons, to the portion of the sheets which relate to the Jackson Park, and not to other properties.

The Court: Is that satisfactory to you, Mr. McConnell?

Mr. McConnell: You are only offering these documents (indicating) out of the whole batch of documents that you had here this morning?

Mr. O'Brien: That's right.

The Court: But the others, as I understand it, are available for your inspection if you want to look at them. Is that right?

Mr. O'Brien: That's correct.

Mr. McConnell: Well, I think if they are going to offer the documents, they ought to go in for what they are, not limit them in some way.

Mr. O'Brien: I have the right to offer the portions which relate to the Jackson Park only. There are other theatres on those exhibits which have nothing to do with this case. We have three theatres on a sheet; and I
1519 make the offer in that way because that is the only part of the document that is proper or that has any bearing on this suit.

The Court: Why isn't that a feasible suggestion?

Mr. McConnell: If I can cross-examine, that's all right. He can offer what he wants, and I will cross examine on the whole document.

The Court: You will both be satisfied.

Mr. O'Brien: I am not asking Mr. McConnell to agree to anything. As a matter of right, I am offering the part—

The Court: And he concedes that you are possessed of that right.

Mr. O'Brien: And what he has a right to examine on is that. I am offering that portion which is referring to the Jackson Park.

The Court: And you concede he has a right to cross examine. Each man is protected in his own rights. Now, let's get ahead with the lawsuit.

(Whereupon the said documents so offered were received in evidence as WARNER BROS. EXHIBITS 4 to 10, inclusive, and are in words and figures as follows, to wit):

1520 *Cross-Examination by Mr. McConnell.*

Q. When did you first start as a salesman in this territory in which the Jackson Park is located?

A. In 1935.

Q. Had you been selling pictures prior to that time?

A. No, sir.

Q. And what was your district? What were the boundaries of it?

A. Of my particular zone?

Q. Yes.

A. South of Madison Street, west as far as Cicero; south as far as, I believe it was One Hundred and something, Burnside.

Q. And where did you get that zone? Who assigned you to that zone?

A. My superior.

Q. And who was he?

A. Thomas Gilliam—in '35, James Winn.

Q. James who?

A. Winn.

Q. And in '36, it was Tom Gilliam?

A. In '36 it was Leo Blank.

1521 Q. Leon Blaney?

A. Blank.

Q. Blank. In '37, who was it?

A. Tom Gilliam.

Q. And it was Tom Gilliam from '37 down?

A. He might have started in the latter part of '36, but he followed Leo Blank.

Q. You had no other superiors after that time, while you were selling for Vitagraph in this zone?

A. No, sir.

Q. Now, did his zone—does that appear in any writing of any kind, or was that just an oral instruction to you?

A. That was an oral instruction, that those theatres would be in my zone, to be taken care of by me.

Q. And what information was given you about the theatres?

A. A cut-off, which was a duplicate of the previous contract. On this cut-off would also be shown the number of seats of the theatre; the admission prices, playing position, the number of days the previous pictures were sold and the rentals, and the clearance that they may have; and all information pertaining to that particular theatre;

1522 that would help me in closing the deal.

Q. And what time of year did you go out to sell these theatres?

A. It varied. I believe I was made a salesman in June, 1935, and I think that I started to go out and negotiate

a deal in August, July and August—starting in July, maybe August.

Q. And you were given instructions as to when and in what playing positions the pictures could be sold to these different theatres, were you not?

A. That's right.

Q. Now, prior to the time that the circuits were sold, the Balaban & Katz and Warner Bros. Circuits were sold, you didn't go out into the field, did you?

A. I had nothing to do with the selling of those Circuits.

Q. They were sold independent of you?

A. Yes, sir.

Q. And sold by your superior?

A. Yes, sir.

Q. And sold prior to the time that you sold?

A. That I couldn't answer. It might have been prior, or it might have been at the same time, or later.

1523 Q. Well, anyway, when you went out to sell, you knew that Balaban & Katz had acquired clearance over certain of the theatres in your zone?

A. I wouldn't say that.

Q. You wouldn't say that? Didn't you have familiarity with where the Balaban & Katz Theatres were playing pictures?

A. All the information that I had was pertaining to the ninety accounts that I sold.

Q. You didn't have any knowledge of anything about Balaban & Katz?

You didn't know a thing about them?

A. No.

Q. You didn't know anything about Warner Bros.?

Mr. O'Brien: Just a minute. Answer, so the reporters can get it.

Mr. McConnell: You didn't know anything about Warner Bros.' pictures, where they played?

A. Warner Bros.' pictures were—

Mr. Adcock: Did the reporter get the noddings of the head?

The Court: Mr. O'Brien just cautioned him to make some audible expression—

The Witness: Yes, sir.

1524 The Court: (Continuing.) —so these reporters can understand what is going on.

The Witness: Yes, sir.

Mr. McConnell: Q. Did you know where your own pictures were being played, in your Warner Bros. theatres?

A. Yes, sir.

Q. In what weeks of release?

A. Yes, sir.

Q. Where did you get that information?

A. From my superior.

Q. But he didn't tell you anything about Balaban & Katz, is that right?

A. At the time, probably not. I am not familiar—I don't remember offhand.

Q. Well, you don't remember, is that it?

A. I don't remember it offhand, that when I went out to sell he said, "Now, these circuits are closed." I don't remember that he did. I don't think he did.

Q. I didn't ask you that. I asked you whether you knew whether or not the Balaban & Katz theatres had clearance over the accounts that you were selling?

Mr. O'Brien: Well, he has answered that.

1525 A. No, I didn't. I didn't have anything to do with Balaban & Katz.

Mr. McConnell: Q. I didn't ask you that. I asked you if you knew whether or not they had clearance?

A. Yes.

Q. And if they did have clearance, you couldn't sell the product except in accordance with those terms of clearance; is that right?

A. That's right.

Q. And it is your position here that you never told Mr. Salkin that at any time?

A. That's right.

Q. You never told him that at any time?

A. While I was a salesman, that's right.

Q. While you were a salesman.

A. That's right.

Q. You talked to Mr. Salkin, not only at the theatre, but in his office and your office, didn't you?

A. That's right.

Q. Have you got any memoranda of those conferences?

A. They will show in my sales reports.

Q. They are all here in the sales reports (indicat-

1526 ing), are they?

A. Yes, sir.

Q. Will you point out in these sales reports where you show the talks in your office?

A. This (indicating) took place at the theatre, and the next morning I made out my sales report, as follows:

Q. I didn't ask you about the theatre. I asked you if you had any report or memorandum where conferences took place in the office?

A. Took place in the office?

Q. In your office, yes.

(Witness examines memoranda.)

A. None of these reports state specifically of working at the office, in my office. They refer to him being at the office—

Q. I don't care what they refer to. I asked you whether you had any there that referred to a conference in your office, and you say you haven't.

A. That's right.

Q. Why haven't you produced those?

A. What was that?

Q. I said why haven't you produced those?

A. Why haven't I produced them?

1527 Q. Yes.

A. I haven't produced any of them.

Q. Well, who did produce these documents?

A. I am not with Warner Bros. Those are in Warner Bros. They come from Warner Bros.

Q. You don't know where these things come from, then?

A. I know that they came from the Warner offices.

Q. But you don't know whether they have been edited or gone over to see which ones to produce?

A. No, sir, I don't know anything about them.

Mr. O'Brien: Well, I object to the comments of counsel. The witness didn't say that he ever made any memorandum of conversations at the office.

Mr. McConnell: He certainly did. He just said a minute ago—

Mr. O'Brien: Neither did he—

The Court: The jury will remember his testimony. As I remember the testimony, he said there were conversations at the office.

Mr. O'Brien: That's right.

The Court: But I don't recall he said he made any memoraidums of conversations at the office.

Mr. O'Brien: That's right, and he didn't say that
1528 the conversations at the office were about the sale of product, either.

Mr. McConnell: All right.

Q. Did you make any memorandum of your conversation at the office?

A. Only what is in those sales reports.

Q. Only what?

A. Only what is in those sales reports (indicating).

Q. Then you didn't make a memorandum, is that it?

A. Yes, sir.

Q. But you did have conferences at the office?

A. Yes, sir. My sales report—pardon me.

Q. And Mr. Mager was present at some of those conferences at your office, wasn't he?

A. Just once.

Q. Just once?

A. Not while I was a salesman, no.

Q. You never had a conference with Mr. Mager at your office?

A. Not at my office, not while I was a salesman.

Q. Did you have conferences with him at the Allied offices?

A. Once.

Q. When was that?

A. That was prior to my going to Omaha, just
1529 when—I think it was the year that the Jackson Park joined the Allied Circuit. I don't know, I can't figure the dates offhand.

Q. Out of all these documents that are identified here, the only ones that have any reference at all to the Jackson Park are these in this little group here (indicating), is that right?

Mr. O'Brien: I object to that statement, if the Court please. What do you mean?

Mr. McConnell: Well, I think I have a right to make that statement. He comes in here with a lot of documents—you would think he had a conference every five minutes, and they don't have anything to do with Jackson Park.

Mr. O'Brien: I deny that. Every one of them has to do with the Jackson Park.

Mr. McConnell: That is what I am asking him.

The Court: What is the question?

Mr. O'Brien: Why argue with the witness and try to put words in his mouth?

The Court: What is the question, Mr. McConnell?

Mr. McConnell: The question I asked him was if, out of all these documents that have been produced here this morning, this little batch up here are the only ones
1530 that have any reference to Jackson Park.

Mr. O'Brien: I object to the question.

I offered certain documents here and gave counsel the right to examine others, all of which others I said related to the Jackson Park, and he sits here with those documents in front of him. Now, he tells—

Mr. McConnell: Well, the jury would get the impression from that group of documents when he comes in here that they had a conference every fifteen minutes. Now, it appears that this is all we have got. I have a right to show it, if your Honor please, I submit that I do.

The Court: You may answer the question, Mr. Witness.

The Witness: What is the question?

Mr. McConnell: Read the question to the witness, please.

(Former question read by reporter as follows:)

"Out of all these documents that are identified here the only ones that have any reference at all to the Jackson Park are these in this little group here, is that right?"

1531 A. No, I wouldn't say that.

I would say that every time I solicited the Jackson Park in an effort to negotiate a deal, the sales—that daily sales report listed the Jackson Park. So, in the number of years that I sold the Jackson Park Theatre, there would be one for every visit at the Jackson Park Theatre.

Q. All right. Now, out of the group that was produced here this morning, are those all of your memorandums for all those years?

A. Each one is dated. Each one has a date up in the corner.

This one here is for February, 1937, February 22nd (indicating).

This one is for July, 1938.

They are all dated, every one of them.

Q. They are all dated, yes. What I am asking you: Have you produced all your memorandums?

Mr. Sedley: He said he didn't produce anything.

The Court: As I understand it, this witness did not produce anything. He simply worked for this company, and the representatives of the company produced the exhibits which Mr. O'Brien has had marked for identification.

1532 Mr. McConnell: All right, I will get at it in another way.

Mr. O'Brien: Including those upon the table, if the Court please.

The Court: And this witness is no longer with that company.

Mr. O'Brien: That's right.

Mr. McConnell: All right. Let me have those documents.

Will you mark these for identification, so we know what we are talking about?

You didn't mark these?

The Court: I thought they were all marked.

Mr. McConnell: He didn't mark them all; he only marked part of them, if the Court please.

The Court: How many of those are there?

Mr. McConnell: I don't know. It looks pretty big.

The Court: All right. Well, suppose we take an adjournment until two o'clock?

One of the jurors has a sore eye, and she wants to go to see the doctor.

Mr. O'Brien: Your Honor—I don't know—how much longer would you be?

The Court: Well, from the way he is starting at that—

1533 Mr. McConnell: I am going to go all the way through this.

Mr. O'Brien: What time is your train?

The Witness: Two-thirty.

The Court: Well, if you can get along with eleven jurors, Mrs. Jones here is in pain because of an eye affliction, and she has to see a doctor, and I don't know whether she can be back here this afternoon or not. If you want to get along with eleven jurors, is that all right with you?

Mr. McConnell: It is all right with me.

The Court: Is that all right with you folks?

Mr. O'Brien: It is all right with me.

The Court: She may go to the doctor, then, and then come back.

Mr. Seeley: I don't like to get along with less than a full jury, your Honor. We can't tell what is coming up—

The Court: Very well. We are met with this situation: A man wants to catch a train; a woman has to go to see the doctor with her eye. I am going to decide in favor of the woman who has to see the doctor.

1534 We will adjourn at this time until two o'clock.

The Witness: Your Honor, I am also under the doctor's orders to take this trip.

The Court: That's all right, my friend. This lady over there is under a doctor's orders to go over there and see him. It is quite apparent that we are not going to finish here before another hour or so, and we are going to adjourn here in ten minutes anyhow.

Mr. O'Brien: May we have a few minutes to discuss it, your Honor?

The Court: To discuss which?

Mr. O'Brien: What we shall do about this?

The Court: Yes.

Mr. Seeley: In view of the situation and the seriousness of it, I will change my mind about the eleven jurors, and agree to go on.

The Court: Now, it might be that when she goes to the doctor she may find that she is able to return later in the afternoon.

Mr. Seeley: I mean regardless of that, as long as somebody is going to be inconvenienced, we will agree to excuse her.

1535 The Court: Then you may be excused, Mrs. Jones. You go over to the doctor, and if you can come back, come on back.

The Juror: Thank you, your Honor.

The Court: Are you leaving your gloves there?

The Juror: My sight is none too good at the present time.

The Court: All right.

(Thereupon the juror retired from the jury box.)

Mr. Seeley: Your Honor, if she is ill and it is necessary, I suppose we could arrange to let her go. I don't want to keep her here—

The Court: Well the Bailiff told me she has been in severe pain all morning; she has just sat there under quite an effort, and she has an appointment with a doctor at a

quarter of one, isn't that it? She lives out here at Willow Springs.

Mr. Seeley: I don't think she ought to make the effort to come back this afternoon.

Mr. Adcock: She may be dismissed entirely.

Mr. Seeley: Well, by Monday she may be all right.

Mr. Adcock: Well, but part of the evidence she
1536 won't hear.

The Court: Well, what kind of an agreement can you make? Do you want to go ahead with eleven jurors? Do you want to permit her to be excused for the afternoon and come back Monday morning?

Mr. Seeley: I would like to have her excused for the afternoon, and come back Monday morning if by that time she is well enough.

The Court: Is that satisfactory to all counsel?

Mr. McConnell: Yes.

1538 The Court: Well, suppose now the rest of us take a recess until 1:30, and see what they can work out.

(Plaintiffs' Exhibits 157 to 172 inclusive marked for identification.)

(Whereupon a recess was taken to 1:30 p. m. of the same day, Friday, March 3, 1944.)

1539 IN THE DISTRICT COURT OF THE UNITED STATES.

• • (Caption) • •

Before Igoe, J., and J.,
Friday, March 3, 1944,
1:30 o'clock p. m.

Court met pursuant to recess.

Present:

Mr. McConnell,
Mr. Korfist,
Mr. Adcock,
Mr. Goldberg,
Mr. Seeley,
Mr. O'Brien.

1540 The Court: We have to wait for a juror who is late.

All right, Mr. McConnell, proceed.

Mr. McConnell: Mr. O'Brien is going to make a statement here to shorten this.

Mr. O'Brien: If the Court please, over the recess, Mr. McConnell and I had a discussion, and as a result, Mr. Korfist and I have taken these separate batches of reports, each page of which was clipped together; and we have taken from each clipped group, the sheets which mention the Jackson Park, both as to the groups which were offered in evidence and as to the groups which were not offered in evidence,—but which were exhibited to counsel.

We now have separate, of those which were offered in evidence, seven sheets, each relating to the Jackson Park and respectively marked Warner's Exhibits 4 to 10 for identification; and out of the batch I offered for exhibition to counsel, the following sheets, each of which relates to the Jackson Park and to other properties as well, which have been marked as follows:

1541 Plaintiffs' Exhibits 157, 158, 161, 172, 171, 160, 170, 169, 159, 168, and 167 for identification.

The sheets that are not marked for identification but are dated as follows:

January 31, 1938,
June 20, 1938,
August 1, 1940,
February 8, 1938,
August 9, 1938,
April 14, 1937,
June 3, 1938,
May 24, 1938,
July 27, 1937,
July 23, 1937,
July 12, 1937,
July 6, 1937,
July 2, 1937,
May 27, 1937,
May 17, 1937,
May 4, 1937,
April 28, 1937,
April 23, 1937,
April 18, 1938,
February 4, 1938,
March 1, 1937,
March 16, 1937,

March 9, 1937,
March 23, 1937, and
April 9, 1937.

It is now agreed not to enumerate these sheets, unless it is desired to do so. They physically appear to be a very thick batch of papers, I should say at least seven to eight times the group which has the Jackson Park; but in each bath, Mr. Korfist and I found always one sheet which did match with the Jackson Park.

1542 Mr. McConnell: You found no sheet in that group that had anything to do with Jackson Park?

Mr. O'Brien: The large group?

Mr. McConnell: The large group.

Mr. O'Brien: There is nothing presently in here. We have taken out the Jackson Park.

Mr. McConnell: So that batch has nothing to do with Jackson Park, is that correct?

Mr. O'Brien: That is correct.

I don't know what the record shows, Mr. McConnell, but I think it should show the agreement of all counsel to proceed with the eleven jurors. I believe it was stated that if the lady who was excused, should come back Monday, that will be agreed to, also.

Mr. Seeley: That is my understanding.

Mr. Adcock: That is my understanding.

Mr. McConnell: That is agreeable.

The Court: That is agreeable to all counsel. Now, let us get this man on the train.

Mr. O'Brien: I might also add for the record, I informed Mr. McConnell that the witness is leaving on doctor's orders. He has a bad heart. It was on that
1543 account that Mr. McConnell agreed to what I have been stating.

Mr. McConnell: Well, I hate to say this, but I think Mr. Shirley was mentioned before. There is one witness which I was advised before the trial that I could not take his deposition on account of a bad heart condition. That was what I tried to avoid with Mr. Shirley yesterday.

Is there any reason why I cannot cross-examine this witness?

Mr. O'Brien: No, not at all.

SIDNEY ROSE, a witness who was previously sworn, resumed the stand and testified further as follows:

Cross-Examination by Mr. McConnell.

Q. Now, Mr. Rose, you said that you had a conversation with Mr. Salkin at your office, in which he requested C week. When was that conversation?

A. When I returned here from Omaha, as branch manager in Chicago.

Q. That was in—

A. It was in 1940. I returned in November, and I believe that meeting was either in November or December.

1544 Q. And you wouldn't have to take that up with anybody, would you? You were branch manager?

A. I was branch manager.

Q. What did you tell Mr. Salkin?

A. I refused his request, telling him that we were selling our own theatre, the Jeffery Theatre, with clearance over the Jackson Park, and that I was unable to sell him that run.

Q. You were not representing the Jefferey Theatre, were you, in any way?

A. No.

Q. That was an affiliated company you have, with Warner Bros.?

A. Yes, sir.

Q. Did you have any obligation to take that up with the district manager?

A. No, sir.

Q. And you didn't?

A. No, sir.

Q. Now, there was nothing different in Mr. Salkin's situation at that time than there was before, when you talked to him as a salesman, was there?

A. Nothing different in which way?

Q. Well, his theatre was the same, his situation was the same in 1940 as it was in 1936 or 1937?

1545 A. I would say so.

Q. And prior to that time, you had no authority to talk to him or to give him any different playing position, is that it?

A. That is right.

Q. Now, do you recall these conversations that you had with him back in 1936, independent of any recollection that you have from these memoranda?

A. Other than those, no. I remember our conversation generally.

Q. Well, could you repeat any part of your conversations in those earlier years, 1936 and '37, independent of any memorandum which you may have made?

A. I would say that it was just generally spoken of, regarding the deal.

Q. You don't recall the conversation?

A. Outside of terms, no, and prices.

Q. And in your talk in the office, who was present at that time?

A. Mr. Mager, Mr. Edward Mager.

Q. Mr. Mager was there, too, was he?

A. Yes.

Q. Did you make any memoranda of that conver-
1546 sation?

A. No.

Q. You made no memoranda. Now, on this Exhibit 4, what is the date there? Can you make that out? Is that 1937?

A. That is February 22, 1937.

Q. All right. Is there any detail given on that memorandum of your conversation at that time?

A. Yes, there is a detail of our conversation.

Q. Well, is there any note or any statement made, or anything of that kind, or is it just a summary which you made?

A. It is a summary of our conversation of the night before.

Q. Will you read the memorandum?

A. "Just started double featuring. Working on deal. Will be in. Not sure of policy, however."

In other words, Mr. Salkin must have informed me he was not sure how he was going to play in his theatre and could not make a deal yet.

Q. Now, this exhibit, Warner Exhibit 5 for identification, read that memoranda.

A. "Working on deal, '38-'39 product. Exhibitor
1547 feels too early to buy. Will be in office in about two weeks."

Q. Did you make any notes at the time of the conversations?

A. No.

Q. And when did you make up these sheets?

A. I would make these sales reports up the following morning, first thing I did when I arrived in the office was make a sales report.

Q. Now, this Exhibit 6, I ask you to read that memorandum to the jury.

A. "Working on deal, '38-'39 product. Exhibitor feels too early to make deal. Owner must first approve. Will be in office in two weeks, when owner arrives from out of town."

Q. Well, you knew who the owner of this theatre was, didn't you?

A. I believe I did.

Q. You referred here in one memoranda to Ike Bloom?

A. Right.

Q. You knew that Ike Bloom did not own this theatre, didn't you?

A. I knew what?

Q. You knew that Ike Bloom didn't own, this 1548 theatre, didn't you?

A. No, I thought he did own it, or I wouldn't have put it in the report.

Q. You signed a contract, didn't you, each year for product?

A. He signed one.

Q. I say you signed one?

A. I made a contract.

Q. And you tendered it for signature, didn't you?

Mr. Seeley: What was the answer?

The Witness: A. I wouldn't have to be in the presence of the fellow signing it, though.

Mr. McConnell: Q. Well, did you look at the contracts to see who signed them?

A. As far as I know, I think Dick Salkin signed them, if my memory serves me right.

Q. Well, we will pass that for the moment until we get the contract.

Now, in Warner's Exhibit 7, will you read your memoranda on that?

A. "Up to date on all product. Trying to secure cash

for advance product for Sears' drive. Will see Ike Bloom, owner, today to get check. Will be in this week."

1549 Q. What did you mean "Up to date on all product"?

A. The man was booked. He was booked, all available pictures, that were available for the Jackson Park. In other words, the man was not delinquent, he was in good shape.

Q. He was not delinquent?

A. That is right.

Q. Well, that does not refer to any conversation, does it?

A. What is that?

Q. That does not refer to any conversation?

A. That is a statement, no.

Q. That is a statement?

A. Yes.

Q. Sort of a report on the account?

A. That is right.

Q. I show you a document which is in evidence here as Plaintiffs' Exhibit 12, and ask you to examine that contract and state who is the exhibitor named there.

A. The exhibitor named here is William C. Bloom.

Q. Will you look at the bottom of it and see who signed it for your company?

A. William C. Bloom.

Q. Who signed it for your company?

A. For our company?

Q. Yes.

A. Sears, G. L. Sears.

1550 Q. Who is G. L. Sears?

A. General manager of distribution.

Q. Who was the salesman named in the contract?

A. Sid Rose.

Q. And that is you, isn't it?

A. That is right.

Q. You still say that you did not know that Ike Bloom was not the owner of that theatre?

A. On that record I would have to say that, but I was under the impression that Ike Bloom owned the theatre.

Q. Ike Bloom owns an entirely different theatre, doesn't he?

A. What is that?

Q. Ike Bloom owns an entirely different theatre, doesn't he?

A. Not that I know of.

Q. Haven't you got an account on your books in the name of Ike Bloom?

A. Not that I know of offhand.

Q. Have you given now all the conversation that you had with Mr. Mager and with Mr. Salkin in your talk in the office about the Jackson Park playing in C position?

1551 A. Have I given all of it?

Q. Yes.

A. That is all, yes, sir.

Q. That is all there was to it?

A. Yes.

Q. How long did that conversation last?

A. A very short time, if my memory serves me right. The request was made, and I refused it, as long as it takes to do that.

Q. Did you negotiate product with the Jackson Park for the '38-'39 season?

A. I think I did. It would have to be borne out by contracts.

Q. Well, do you know whether you did or not?

A. '38-'39? I am quite sure I sold the Jackson Park Theatre a contract.

Q. Did you negotiate for the '39-'40 product?

A. I believe I made a deal for the '39-'40 product prior to my leaving for Omaha, yes.

Q. I show you a document marked Plaintiffs' Exhibit 12, purporting to be for product for the '39-'40 season, and ask you to state who is named as salesman in that contract?

A. T. Mendelsson.

Q. Who is T. Mendelsson?

A. Teddy Mendelsson, the salesman that followed
1552 me, took my place.

Q. Do you want to change your statement now that you—

A. I guess I would have to change it, yes. I was not sure.

Q. As a matter of fact, you have no independent recollection of these conversations at all, do you?

A. Outside of these reports, no.

Q. And you have read all the reports that have any bearing on these?

A. These here (indicating), I have.

Q. Let us see what you have there. Oh, those are the exhibits you just testified about.

Have you examined the other folders which were marked here, but which Mr. O'Brien did not offer in evidence?

A. I might have seen one or two of them this morning, but I did not examine them thoroughly. I might just have looked at them.

Q. What did you do this morning; where was this conference you had this morning?

A. In my office.

Q. Whom with? Who was there?

1553 A. Mr. O'Brien and Mr. Levinsohn.

Q. Who is Mr. Levinsohn, is he here in the court room?

A. Yes, he is.

Q. The gentleman sitting over here (indicating)?

A. That is right.

Q. Did the gentlemen tell you what you were to testify to here this morning?

A. No.

Q. What did they talk to you about?

A. They talked to me about these reports, and wanted an understanding of how we operate, how a salesman operated that work for Warner's regarding these reports.

Q. Where did these reports come from? You do not know that, though, do you?

A. I don't know that. I know they were mine.

Q. You do not know whether they have got them all here in court?

A. No, I do not.

Q. Did you ever talk to William Bloom?

A. I don't think I ever did.

Q. Did you ever have a talk with Mr. Coston about Jackson Park playing in C week?

1554 A. No, sir.

Q. Didn't Mr. Coston come to you in 1941, and ask that the Jackson Park be permitted to move up to C week?

A. He did not.

Mr. O'Brien: I would suggest for the record that that is not proper cross, as far as any conversation with Mr. Coston is concerned. The witness said nothing about that on direct.

The Court: Well, if it was not gone into on direct, why, you cannot go into it on cross.

Mr. McConnell: Q. Now, when you became branch manager, what data did you have there in the office with reference to playing positions and the admission prices of the theatres in Chicago?

A. The various contracts that were on our books at that time.

Q. Did you have a chart, map, of any kind?

A. There might have been one in the office showing the playing position of every theatre, yes.

Q. And you had that to consult with at all times?

A. Yes.

Q. And that would show, would it not, not only that
1555 position the theatre was playing your product, but it would show the position it was playing any product?

A. No, it would shew the way Warner pictures were sold in the city of Chicago. It had nothing to do with any other picture.

Q. Well, it would show the minimum admission price of the theatre, wouldn't it?

A. It would show the admission price that they were charging.

Q. Well, you had minimum admission prices which you insisted that they charge?

A. Maintain, yes.

Q. Fifty cents in A week; 40 cents in B week, 30 cents in C week?

A. That is right.

Q. And you provided in all your contracts, did you not, that if any exhibitor played below those minimum admission prices, they lost the run?

A. The contracts would have an admission price to be charged under that contract, according to the deal, according to that contract, right in that contract is an admission charge.

Q. And it would also have a penalty provision,
1556 would it not? If the minimum admission was violated they lost the run?

A. It might be in the printed clauses. Offhand, I don't know. I would have to look at it.

Q. You do not recall of your own independent recollection. And you used the same contract with all exhibitors, didn't you?

A. Yes, sir.

Q. The same form?

A. Yes, sir.

Mr. McConnell: Q. Now, have you negotiated any sale of pictures with the Balaban & Katz circuit since you have been branch manager?

A. I think that deal had already been completed the year I came to Chicago as branch manager. Tom Gilliam, I believe, is the gentleman who made that deal.

Q. The deal with Balaban & Katz?

Mr. O'Brien: While the witness has answered, I
1557 still object because that was not gone into on direct. I did not ask him about—

Mr. McConnell: He went into the witness's knowledge.

The Court: Let the record show that Mrs. Jones has now returned. Do you think you can sit through the afternoon?

Mrs. Jones: He put a narcotic in my eye, and I think I can take it.

The Court: Now, you are objecting to the question because it was not gone into on direct?

Mr. O'Brien: Yes. The only thing I asked the witness, as branch manager, did he ever have a conversation with Mr. Salkin and Mr. Mager, which the record shows he testified he did. The witness said he did. He had the talk with them and rejected it. He did not testify to negotiating any contract as branch manager, and I am purposely trying to keep it out. I have other witnesses on the subject.

Mr. McConnell: You asked him whether he had any knowledge concerning the agreements or understandings.

Mr. O'Brien: That is true.

Mr. McConnell: Well, this is directed to that direct
1558 examination, as to what his knowledge was.

The Court: Well, of course, that gets back to the point that caused all the discussion here yesterday. I think both sides are right in this matter, and I am in the middle, as is usually the case.

How many more of these questions are you going to put to this man? I think in good faith we ought to try to let him catch his train, if he can.

Mr. McConnell: I cannot see that clock. I am too near sighted.

The Court: That is unfortunate for this witness.

Mr. McConnell: What time is it?

The Court: It is about two minutes after 2:00.

Mr. McConnell: All right, I will close now. Will you read the question to the witness?

(Question read.)

Mr. O'brien: I say, I will produce Mr. Gilliam. He is in the court room.

Mr. McConnell: I want to know if he had any part in it.

The Court: Do you understand the question?

1559 The Witness: Yes, I understand it.

The Court: What is the answer?

The Witness: I did answer.

The Court: Let us have another question.

Mr. McConnell: Q. Well, did you negotiate at any time on a Balaban & Katz deal since you have been with this company?

A. No.

Mr. McConnell: That is all.

Mr. Adcock: I want to ask just one question, if I may.

Examination by Mr. Adcock.

Q. In the conversation, which I believe you stated was in 1940, between you and Mr. Mager and Mr. Salkin, in which there was something said about Jackson Park moving to C week, was anything said by Mr. Salkin or Mr. Mager at that time with respect to any understanding they had with Mr. Coston about attempting to get Jeffery to move to B week, Jackson Park to C week, and the Hamilton to first week?

A. Nothing was ever said to me in regard to your question.

Q. All right.

1560 The Witness: From either Mr. Salkin or Mr. Mager.

Mr. Adcock: All right. That is all.

The Court: Any further questions of this gentleman?

Mr. O'Brien: Nothing further for me.

The Court: All right, I guess you are excused. You will have plenty of time to catch your train.

The Witness: Yes, thank you.

(Witness excused.)

The Court: Do you have another witness?

Mr. Seeley: Mr. Adcock has a man who wants to get out of town.

The Court: What is the matter, don't any of these people like our city? What is the name of this man?

Mr. Adcock: Mr. Wirthwein. Mr. Wirthwein lives in Milwaukee.

The Court: Oh, well, that is just a suburb.

1561 HAROLD WIRTHWEIN, produced as a witness by the defendants Balaban & Katz Corporation and Paramount Pictures, Inc., having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Adcock.

Q. Will you state your full name?

A. Harold Wirthwein.

Q. Where do you reside?

A. In Wauwatosa, Wisconsin, which is a suburb of Milwaukee.

Q. Do you have any business in Milwaukee?

A. I am branch manager for Paramount Film Distributing Corporation.

Q. How long have you been employed by the Paramount?

A. I have been employed by Paramount since 1928, fifteen years.

Q. Will you just briefly state the different positions you have held and places where you have performed services for Paramount?

A. I started working for Paramount in Milwaukee in 1928, in the shipping department. I was in there for about six months, when they transferred me into the ad-

1562 vertising department. I worked in their advertising department in Milwaukee until 1931, approximately, at which time they transferred me to Chicago, and I was put in charge of their advertising department here in Chicago.

I was in charge of the advertising department in Chicago until about 1933, at which time I became a country salesman in the Chicago territory, and in 1937, I became a city salesman for Paramount.

I sold our pictures to the South Side of Chicago.

I continued as city salesman until 1941, about, at which time I was made a circuit salesman, selling some of the circuits here in the city of Chicago, and in 1942, I think about July, 1942, I became Chicago sales manager.

And in 1943, September, 1943, I went to Milwaukee as branch manager.

Q. Can you remember the date when you became salesman in Chicago in 1937, city salesman?

A. It was about August, sometime in August.

Q. 1937?
A.—1937.

Q. As country salesman, that was work in territory
1563 outside of Chicago, and its immediate suburbs, is that correct?

A. Yes, sir.

Q. That is in the Chicago exchange area, is that right?

A. Yes, sir.

Q. In 1937, did you have any negotiations with Mr. Salkin or Mr. Mager or both with respect to licensing of Paramount product for the Jackson Park Theatre for the season 1937-'38?

A. No, I did not.

Q. Do you know whether that product, the 1937-38 product had already been sold to the Jackson Park?

A. Yes.

Q. Prior to that time?

A. Yes, it had been sold to Jackson Park the year prior to that.

Q. That was in 1936?

A. I think in December, 1936.

Q. Would you state how the business of selling product through salesmen, as far as you know it, was carried on by Paramount? What were the salesmen to do? Were they given any instructions?

A. Why, we were given instructions, only in so far as
we had to discuss different situations with the execu-
1564 tives of the office regarding the film rentals that that situation should pay for our pictures.

Q. You were a South Side salesman, were you?

A. In 1937, yes, sir.

Q. Until the time—

A. Starting in 1937.

Q. And you had a number of accounts in that territory?

A. Yes, sir.

Q. When did you start, what part of the year did you commence negotiating or attempting to negotiate the sale of product?

A. We generally started negotiations in about the fall of each year, generally after our sales convention of that year.

Q. Did either Mr. Salkin or Mr. Mager or both, from 1937, as long as you were connected with this Chicago

branch, as far as you know, ask to negotiate for their product before the buying season had started?

A. They h d never talked to me directly about buying the product before the season started, except that I know, the year before I became South Side salesman they
1565 had bought our product two years in advance, that is, bought two years' product at one time.

Q. They never had asked you?

A. They never had talked to me about buying early.

Q. Did Salkin or Mager or both, after 1937, in connection with the negotiations for licensing pictures from Paramount, ask that the Jackson Park be licensed to play in a playing position ahead of the first week of general release?

No.

Q. Do you have any recollection of your ever saying to Mr. Salkin or to Mr. Mager or both of them in any buying season that they could not negotiate for product until after the circuits had been sold?

A. No, I never told them they could not buy. We were willing to negotiate with them at any time after the company had made the announcement of their product for the coming season.

Q. And when was that usually done?

A. Generally in fall.

Mr. Adcock: That is all.

1566 *Cross-Examination by Mr. McConnell.*

Q. Now, you said that you were willing to negotiate with them any time in the fall?

A. Well, at any time after we had made the announcement of our product, and we knew what we had to sell.

Q. All right. When did you make the announcement of your product?

A. It varied. Sometimes it would be August, September, October.

Q. Were you given any information as to the result of the negotiations of the first runs of your company?

A. I had no occasion to acquire that knowledge. Our negotiations for first run had nothing to do with me.

Q. Well, I did not ask you whether you had any occasion to have that knowledge, I asked you if you knew about the result of the negotiations with the first runs?

A. Just vaguely, in that I knew that the product was being negotiated for.

Q. And that was done prior to the time that
1567 you started negotiations about the product, wasn't it?

A. Not necessarily.

Q. Well, you could not sell a theatre a run if Balaban & Katz had clearance, could you?

A. I don't understand your question. Will you repeat it, please?

Q. If the Balaban & Katz chain had clearance on another competing theatre outside the chain, you could not sell, you had no authority to sell that theatre pictures?

A. Well, it would not necessarily have to be Balaban & Katz. If any one had clearance over another situation, I could not sell contrary to that clearance.

Q. Well, that is all I want to know. It is so with Balaban & Katz though, isn't it?

A. Of anybody.

Q. Well, it is so of Balaban & Katz, isn't it?

A. Yes, sir.

Q. And you know that the deals with Balaban & Katz are negotiated ahead of all the subsequent-run deals, aren't they?

A. Not necessarily.

1568 Q. Are you present at any of those negotiations?

A. Not for first run product, no, I never had any.

Q. Well, how do you know about the negotiations for first run product?

A. I don't know. I don't know anything about the negotiations for first run product, I never had been assigned to the first run deal, never negotiated it.

Q. Well, it is negotiated ahead of the time you are assigned to anything, isn't it?

A. No, not in our company. We might negotiate that deal, three or four deals after I had negotiated with any given theatre.

Q. You might, but the practice is to negotiate it first, isn't it?

A. I wouldn't say so, no.

Q. Well, when you go out to sell your theatres, do you have a clearance schedule? Do you know what the clearances are on the different theatres?

A. Yes, we have our records from the past years, the current year.

Q. And those records are available to you?

A. That is right.

1569 Q. And they are in the office?

A. Yes, sir.

Q. And when you say you sell, you sell what is left after the clearances are taken into account, isn't that right?

A. No. We don't sell what is left. We sell according to what has been established.

Q. All right. What is established is established by clearance schedules with theatres, isn't it?

A. Yes, sir.

Q. And those are contracts which are in existence?

A. Yes, sir.

Q. And when you go out to sell the subsequent-run theatres, there are certain clerance provisions which are in existence at that time?

A. That is right.

Q. And you know about that, don't you?

A. Yes, sir.

Q. And you know that you are governed in your sales by those clearance schedules, do you not?

A. Yes.

Q. And you don't vary from them, you yourself, as a salesman?

A. Well, not generally. It is very unusual that there is any occasion to vary from it.

1570 Q. Well, you cannot vary from it, can you, you, as an individual salesman?

A. If there were to be a change in clearance, I, as a salesman would discuss it with some of the superiors in the office.

Q. If there was to be one?

A. That is right.

Q. But at the time you go out to sell your subsequent runs, the prior runs are all negotiated, aren't they?

Mr. Adcock: He has asked that question a half a dozen times, your Honor, and it has been answered.

The Court: Q. Have you answered that question before?

A. Yes, I have.

The Court: The objection is sustained.

Mr. McConnell: Q. Now, do you have any of these memoranda of your calls?

A. Which memoranda do you refer to?

Q. Have you been in the court room when the prior witness testified?

A. I heard you talking about a salesman's report, but I don't know anything about it. I mean, there are different types of memoranda.

Q. Well, do you have any?

1571 A. Do you mean did I make any reports to my superiors in writing?

Q. Yes.

A. No, our executives in our offices did not require written reports.

Q. You did not make any?

A. No.

Q. Your salesmen never make any reports, is that it?

A. Our country salesmen make written reports, because they are out in the territory anywhere from 50 to 200 miles away from the office, so at the end of each day they make written reports regarding their calls for the day, but the city salesmen in our office are not required to make written reports, because they come into the office each morning and discuss everything verbally.

Q. And you did not make any?

A. I did not make any, no.

Q. Is there any record of your verbal discussions when you come into the office?

A. Not to my knowledge.

Q. Does your superior make a report of his verbal discussions with the salesmen?

A. Not to my knowledge, no.

1572 Q. Who was your superior during this period of time?

A. Chiefly, Mr. Donohue and Mr. Usher.

Q. Do you know Mr. Mager?

A. Mr. Mager?

Q. Yes.

A. Yes, he is a professional film buyer here in Chicago.

Q. I did not ask you who he was, I asked you if you knew him.

A. I knew him.

Q. How long have you known him?

A. I know Mr. Mager about ten years.

Q. Did you ever have any talks with him about t
Jackson Park?
A. On all occasions when I discussed film rentals wi
Mr. Salkin, Mr. Mager was with Mr. Salkin.
Q. They were always together?
A. Yes.
Q. On every occasion?
A. Yes, sir.
Q. Now, as a matter of fact, you did sell some produ
to the Jackson Park in C week, didn't you?
A. I think we did. In fact,—yes, we did sell one p
ture to the Jackson Park.
1573 Q. How did you happen to sell one picture?
A. We had one picture called "Reap The W
Wind" that we sold on a special policy, a road show p
ture, sold at increased admission prices.
Q. The Jackson Park bought it in C week, didn't it?
A. An the Jackson Park bought that picture in C we
Q. Well, they asked for it in C week, didn't they?
A. Yes, they did.
Mr. McConnell: That is all.

Redirect Examination by Mr. Adcock.

Q. What was the admission price charged?
A. Fifty-five cents minimum for adults, in the eveni
Mr. Adcock: That is all.
(Witness excused.)

1574 EUGENE T. SMITH, produced as a witness on b
half of defendant Balaban & Katz Corporati
and Paramount Pictures, Inc., having been fi
duly sworn, was examined and testified as follow

Direct Examination by Mr. Adcock.

Q. State your full name.
A. Eugene T. Smith.
Q. Residence?
A. Hazelcrest, Illinois.
Q. Talk a little louder, we want the jury to hear.
A. All right.
Q. And these people back here.

What is your occupation?

A. I am booking pictures now.

Q. By whom are you employed?

A. Paramount Pictures.

Q. How long have you been employed by Paramount?

A. Well, I started to work in 1924, until 1939, and I left the service for three years and returned in 1942 until the present time.

Q. Will you state what your various duties were as an employee of Paramount during the period that you have mentioned?

A. I started in the advertising department and after a few weeks was transferred to the booking department, and from the booking department, in 1927, I was transferred to selling and remained there until 1929, when I was transferred to the Milwaukee exchange as a booker and returned about November 1st of '29, and I was given charge of the checkers—

Q. Checkers?

A. That is checkers, those that check percentage engagements.

Q. That check what?

A. Check percentage engagements at theatres.

Q. Oh, yes.

A. And in May of 1930, I went back to selling and continued selling until 1939.

Q. In the years 1928 and '29, you were a salesman, then, were you, city salesman?

A. That is right, to the spring of '29.

Q. You never were a country salesman, is that right?

A. Not at that time, no.

Q. Do you remember any contacts that you had in '28 and '29 with Mr. Richard Salkin, the gentleman here (indicating)?

A. Well, I managed to visit each theatre at least every two to three weeks.

Q. You were a South Side salesman for Paramount?

A. That is right.

Q. South Side of Chicago. And the Jackson Park was one of your accounts, is that right?

A. That is right.

Q. How many other theatres did you have on the South Side?

A. Well, I don't recollect the number, but I think it ran between 70 and 80.

Q. Do you recall any conversation during the year 1928 and '29 with Mr. Salkin when he asked you, in connection with negotiations which he was having with you, in respect to the buying of pictures for Jackson Park, to move Jackson Park from the playing position in which it was then playing to a playing position ahead of that?

A. No.

Q. Did you have any contact with Mr. Salkin in the fall of 1936, with reference to 1936 and '37 product and '37-'38 product of Paramount for the Jackson Park Theatre?

A. Yes, I contacted him.

Q. Did you negotiate any contracts in that year?

A. In '36?

1577 Q. Yes.

A. Yes, we negotiated and completed the contract '36-'37 and '37-'38 at the same time.

Q. And those contracts as you recollect, were signed in December of 1936?

A. That is right.

Q. Did you have any conversation with Mr. Salkin or Mr. Mager or both of them with respect to the selling of your product for the '37-'38 season in 1937?

A. No, we had no occasion for that.

Q. What is that?

A. We had no occasion to talk over contracts, because we already had them.

Q. That product had been sold?

A. That is right.

Q. Did you have any conversation with Mr. Salkin or Mr. Mager or both of them, during the years after 1937, and did you state to him at any such conversations, if you had any, that you could not sell Jackson Park ahead of the buying season, because Jackson Park had to wait until Paramount made their deals with circuits before Paramount could negotiate and deal with Jackson Park, or words to that effect?

A. No, because we had already sold two years' 1578 product at one time.

Q. I am referring to seasons after the '37-'38 season, from '38 on.

A. No. Well, I was not in the territory then. I had been transferred in '37 to the road, I was traveling.

Q. I see. In any negotiations that you had with Mr. Salkin or Mr. Mager or both of them, after the year 1937, or in the year 1936, when you were negotiating the two-season deal, the two-year deal, did they ever ask that the Jackson Park play the Paramount pictures in a playing position ahead of first week of general release or play in C week?

A. No, our negotiations were strictly coming to an agreement on terms, rental terms, that was the only question in making the contract.

Q. Have you ever tsetified in court before?

A. No, sir.

Mr. Adcock: That is all.

Cross-Examination by Mr. McConnell.

Q. You did have conversations with Mr. Salkin in '36?

A. Yes, I would contact him regularly.

Q. In '37?

A. Well, in '37 I would make the usual calls, 1579 even after they are sold, drop around every couple of weeks and call on them.

Q. And you had talks?

A. Or, yes, we had conversations.

Q. In '37?

A. Yes, until I left. I left in the—oh, I don't know, it was in the early summer when I went on the road in '37.

Q. Then, your knowledge of the matter has to do just with the years '36 and '37, is that correct?

A. That would be right, yes.

Q. Did you talk to Mr. Mager at any time during that time?

A. Well, Mr. Mager was present when Mr. Salkin signed the contract in our office, and other than that, why, he would always be with Mr. Salkin in any conversation.

Q. In other words, the two were together?

A. That is right, when he signed the contract he was there in our office.

Q. Well, on other occasions, was he present?

A. Well, I would say that, I think, on most occasions, Mr. Mager was present when Mr. Salkin signed the con-

tracts, although we would negotiate them ourselves
1580 at times, but when it came to signing the contracts, why, Mr. Mager was present.

Q. Well, aside from the time of the signing of the contracts, did you have talks with Mr. Salkin with Mr. Mager present?

A. Pardon, I did not get that.

Q. Aside from the time of the signing of any contracts, did you have talks at which Mr. Mager was present?

A. Well, no, it was usually around at the time of the signing of the deal that Mr. Mager was present.

Q. Around the time?

A. That is right.

Q. Where would those conversations take place?

A. Well, we would sign contracts in various places, sometimes in their office, and this one in particular, in '36, we signed in our office.

Q. That was for 1936 and '37 product?

A. And '37 and '38 product.

Q. And when was that signed?

A. I think the date was December 4, 1936.

Q. Now, the fact that the product had been bought for two seasons would not stop negotiations for a prior run, would it?

Mr. Adcock: Well, I—I will withdraw it.

1581 The Witness: A. Well, that would not be for me to decide. I mean, my authority is limited to accepting an application.

Q. What kind of an application?

A. An application for the rental of our pictures.

Q. Well, these negotiations were carried on orally, were they not?

A. Yes.

Q. There was no writing about it?

A. That is right.

Q. And that was customary, wasn't it?

A. That was right.

Q. And when you went out to sell your pictures, you had an idea of what pictures, what ones were available for sale by you, did you not?

A. I was guided by the previous sale.

Q. What else were you guided by, anything else?

A. Well, the playing position of the theatre and the former rentals, compared with the policy with the company asked for the following year.

Q. Where did the playing position of the theatres, from what data did you get that?

A. From previous contracts.

Q. Did you know what clearance Balaban & Katz
1582 and Warner Bros. had ever the other theatres?

A. No, that would not enter into it. It is each individual theatre, what their status is.

Q. Did you know they had clearance over other theatres?

A. No.

Q. You did not know that?

A. No, sir.

Q. No one ever told you about that?

A. That would not enter into any theatre.

Q. I am not asking you that. I am asking if anybody ever told you that?

A. I have known of the schedule clearance, but I am speaking of this particular spot, that it would not enter into the Jackson Park.

1583 Q. But did you know of the clearance? That is what I am trying to get at.

A. No, not of any clearance on the Jackson Park.

Q. You didn't know anything about that?

A. No, because it was not important in the deal.

Q. The fact that Balaban & Katz had clearance over the Jackson Park would not be important in your deal, is that your position?

A. I didn't say they haven't, because it would not be guided by Balaban & Katz. These contracts are prior run. In other words, his contract called for first week of release. He has clearance on them, or he hasn't. Then, in turn, he has clearance on the theatres that follow him.

Q. But did you know that Balaban & Katz held clearance?

A. No.

Q. On the Jackson Park Theater, and that was the reason it was in first week release?

A. No, I don't know that is the reason, because there are other theaters besides Balaban & Katz in the territory.

Q. You don't know it now and didn't know it then?

A. That is right; I mean, there are other theaters
1584 in the territory.

Q. Did you have any data in the office from which you could obtain that information?

A. Yes, sir.

Q. Did you obtain such information?

A. No. As I say, it was not necessary for me to investigate those.

Q. For any of the runs in your territory, it was not necessary?

A. Do you say any runs, or Jackson Park?

Q. In any runs.

A. In other situations, yes.

Q. So you got the information in other situations, did you?

A. According to the previous sale.

Q. Did you get the information about the clearance of Balaban & Katz, that Balaban & Katz held over the other theaters in your territory while you were a salesman there?

A. I would not remember that because—

Q. You would not remember that?

Mr. Adcock: Wait a minute. I don't see why counsel has to interrupt every witness in his answer. The 1585 witness, I think, should be permitted to finish his answer without interruption from the interrogator.

Mr. McConnell: I notice every time I try to make a point in cross examination, you have some way or means to interrupt.

Mr. Adcock: It is unfair, that is an unfair statement and it is not true. You, time and again, have broken in on the witness' answer and it is not fair to the witness. That is something counsel should avoid doing, being unfair to the witness.

The Court: Now, suppose you ask the witness a question.

Mr. McConnell: Q. Now, you left as a salesman in 1938?

A. In—you mean left the service?

Q. You left, you were no longer a salesman on the south side after 1938?

A. 1937.

Q. 1937?

A. That is right.

Q. Did you have any talks at the office with Mr. Salkin and Mr. Mager?

A. You mean at our office?

Q. Yes; at your office?

1586 A. Not that I recall. It is possible, but because I met them so frequently that—

Q. Let us go back to 1936 and see if we can fix your first conversation that you had with either of these gentlemen.

A. Well, I could not tell you the conversation any more than I could tell you the terms that I offered, and it came to the point of where Mr. Salkin thought that we could get together on a contract, and Mr. Mager came to our office, Mr. Usher was present, and we went over the terms and they seemed agreeable, and the contract was signed.

Q. Now, do you recall the first time you had a conversation with either of these gentlemen, Mr. Mager or Mr. Salkin? That is the question I want you to answer.

A. No, I don't, because it goes back over a period of years.

Q. You don't recall the first time you had a conversation in 1936?

A. No, sir, I would not say.

Q. Do you recall any particular time in 1936 when the conversation was had, when you had a conversation with these gentlemen?

1587 A. No specific time. I was naturally calling on them, but I don't remember any particular time when the two of us together outside of that time when I signed the contract.

Q. Do you recall any conversation at which you can relate just what the parties said, what was said on one side and what was said on the other?

A. Are you speaking of 1936 now?

Q. Yes, I am speaking of 1936.

A. No, I would not remember any conversation.

Mr. McConnell: That is all.

Redirect Examination by Mr. Adcock.

Q. In 1937, you had the deal for, arrangement for—the product for that year 1937-1938 had been sold?

A. That is correct.

Q. Did you say that you made calls on Mr. Salkin during that year 1937?

A. Yes, I always made calls.

Q. What was the purpose of calling on him?

A. I always kept in contact with my accounts.

Q. But not for the purpose of making any con-
1588 tract, or negotiating any contracts?
A. No, just to keep in contact.
Q. To see he didn't get away from you?
A. That is right.
Mr. Adcock: That is all.
The Court: Call the next witness.

JOE COZZI, called as a witness on behalf of defendant R-K-O, having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Seeley.

Q. State your name, please, sir.
The Court: How about Mr. O'Brien?
Mr. Seeley: He said to go ahead.
A. Joe Cozzi.
Q. Where do you live?
A. 2222 West Taylor Street.
Q. Chicago?
A. Yes, sir.
Q. And by whom are you employed?
A. R-K-O Radio Pictures.
1589 Q. In what capacity?
A. Presently as salesman.
Q. How long have you been salesman for that company?
A. March, 1939, five years.
Q. Since March, 1939?
A. Yes, sir.
Q. During the period from March, 1939 to the present time, was there any period of time when you were a salesman on the south side, and negotiating with the Jackson Park Theater?
A. Repeat that, please.
Q. Since you went to work as a salesman in 1939, was there a time when you were selling the Jackson Park Theater?
A. Yes, there was.
Q. What was that time?
A. I sold them for 1939-1940 product; and as best I can recall, I sold them for 1941-1942 product.

Q. Did you talk to Mr. Richard Salkin in the course of those negotiations?

A. Indeed I did.

Q. Did you talk to Mr. Edward Mager also?

A. Yes, sir, I did.

1590 Q. In any of the talks which you had with those two gentlemen, did either of them ask you to have a better playing position than first week of general release for the Jackson Park Theater?

A. No, sir.

Q. Was there any discussion on that subject that you can recall at all?

A. To my knowledge, there never was any discussion.

Mr. Seeley: Cross examine.

Cross-Examination by Mr. McConnell.

Q. What were you prior to the time you were a salesman for R-K-O?

A. What was I what?

Q. What was your business prior to the time you were a salesman for R-K-O?

A. I was a booker.

Q. With what company?

A. R-K-O Radio Pictures.

Q. How long were you a booker?

A. For about eight years.

Q. Where?

1591 A. At the R-K-O Radio office at 9th and Wabash.

Q. What were you prior to that time, what was your business?

A. I was a cashier?

Q. Where?

A. With R-K-O Radio Pictures.

Q. At what office?

A. At 9th and Wabash.

Q. Has all your business life been with R-K-O?

A. Yes, sir; for eighteen years.

Q. What is your present position?

A. Salesman.

Q. On the south side?

A. On the west side.

Q. On the west side?

A. Yes, sir.

Q. Did you keep any memoranda at all, or any record of your talks with Mr. Mager, or with Mr. Salkin?

A. Not that I remember, sir. It is not our practice to make records of our deals, rather, of our conversations.

Q. What do you make records of?

A. Just our deals.

1592 Mr. Seeley: I object to that question. It is outside the scope of the direct.

Mr. McConnell: It is not outside the scope of the direct. I have a right to cross examine—

The Court: He has answered the question.

Mr. McConnell: Q. Did you answer the question?

A. Will you repeat the question again, please?

The Court: He has given an answer. Read the answer. (Answer read.)

Mr. McConnell: Q. Did you keep any memoranda of your conversations?

A. No, sir.

Q. You did have talks with Mr. Salkin and Mr. Mager, both of them?

A. Yes, sir.

Q. Where did you have those talks?

A. Either at Mr. Salkin's theater, with Mr. Salkin alone, or at the Allied Office with both Mr. Salkin and Mr. Mager, or at my office, with both or either.

Q. In 1939, what conversation do you recall in that year?

A. I don't recall any conversation other than it was that we were negotiating for our product for the 1593 year, for the 1939-1940 product.

Q. That was conversation, wasn't it?

A. Yes, sir.

Q. Where did you have it?

A. I believe it was at the theater.

Q. What time of the year?

A. Along about November or the 1st of December.

Q. 1939?

A. Yes, sir.

Q. How many conversations did you have, do you remember?

A. Several.

Q. During those conversations, Mr. Mager was present?

A. I would say in one of the conversations, or two, he was present, yes, sir.

Q. What conversations did you have in 1940, and where?

A. Well, some conversations we had in 1939 concerning our product, the sale of our product, and I believe it was at the Allied office with Mr. Mager.

Q. And 1941?

A. We didn't sell him our product for 1940-1941; at least, I didn't sell it to him.

1594 Q. Who did sell it to him?

A. I don't believe we sold him at all that year, sir.

Q. So you don't think you had any conversations in 1940-1941, is that it?

A. It is possible we had conversations trying to effect a deal, but that is all.

Q. How about 1942?

A. Do you mean 1941-1942?

Q. No, the year 1942, trying to fix these conversations?

A. I don't believe that I had any conversations with him about that product for that year.

Q. Do you recall definitely, one way or the other, whether you did or did not?

A. I don't recall definitely, no, sir.

Q. Can you give any of those conversations verbatim, that is, what you said and what the other man said?

A. No, sir, I could not.

Q. When you went out to sell this product on the south side, you knew that Balaban & Katz and Warner Brothers had certain clearance over other theaters there, didn't you?

A. Yes, sir.

1595 Q. Where did you get that information?

A. I had a copy of the previous deals that I took along with me on every solicitation.

Q. You knew from that, that these other theaters had clearance over certain spots, certain theaters in your district?

A. Yes, sir.

Q. What time of year did you got out to sell?

A. Oh, along about November.

Q. Do you have any information about when your company negotiates its loop deals?

A. No, I do not, sir.

Q. You don't know anything about that?

A. No, sir, I do not.
Mr. McConnell: That is all.
Mr. Seeley: That is all.
(Witness excused.)

1596 HAROLD LOEB, called as a witness on behalf of Twentieth Century-Fox Film Corporation, having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Seeley.

Q. State your full name, please.
A. Harold Loeb.
Q. Where do you live?
A. 451 West Melrose Street.
Q. By whom are you employed?
A. Twentieth Century-Fox Film.
Q. In what capacity?
A. Salesman.
Q. For how long have you been employed by the Twentieth Century-Fox, as a salesman?
A. About twenty-five years.
Q. In Chicago?
A. In Chicago, yes, sir.
Q. During all that time, have you been a salesman on the south side?
A. Yes, sir.
Q. In the territory which includes the Jackson Park Theater?
A. Yes, sir.
1597 Q. During most of that period, have you handled negotiations for the sale of Fox pictures to the Jackson Park Theater?
A. During most of that period, I have.
Q. During the period the Jackson Park Theater bought through the Brockell Circuit, did you have anything to do with the negotiations?
A. No, sir.
Q. It was in the early thirties, I believe?
A. Somewhere in there, I think.
Q. Aside from that period, you were the one, were you, who handled that negotiation?

A. Yes, sir.

Q. And in the course of those years, did you know Richard Salkin?

A. Quite well.

Q. You have known him at least all the time he has been manager of the Jackson Park Theater?

A. Yes, sir.

Q. You know Mr. Edward Mager, do you?

A. Yes, sir.

Q. In recent years, have you dealt with the sales, with Mr. Salkin?

A. No, with the exception of possibly one year 1598 that Mr. Mager might have assisted Mr. Salkin.

Q. Well, in the course of these years, would you say you have had few or many conversations with Richard Salkin?

A. Many.

Q. Is it possible for you now to fix an exact time that any of those took place?

A. No, sir.

Q. Or to state verbatim what you said and what he said?

A. No, sir.

Q. Do you recall ever having a conversation with Mr. Salkin in which he asked to have the Jackson Park Theater play Fox pictures in a run prior to first week of general release?

A. No, sir.

Q. Can you recall any conversation with him in which that subject came up for discussion at all?

A. No, sir.

Q. This time when you say you negotiated, or you talked with Mr. Mager, did that subject come up for discussion?

A. No, sir.

Q. In connection with the Fox picture "Gone with 1599 the Wind," did you negotiate that deal with the Jackson Park?

A. That is not our picture, "Gone With the Wind."

Q. It certainly isn't. I take that back. "How Green Was My Valley"?

A. Yes, sir.

Q. That deal was set up for the Jackson Park Theater in "C" week, was it not?

A. "How Green Was My Valley," you are speaking of?
Q. "How Green Was My Valley."
A. Yes, sir.
Q. Who, in your office, set it up for sale that way?
A. My superior.
Q. What was his name?
A. Mr. Eckhardt.
Q. Was that picture sold to the Warner Brothers theaters on the south side?
A. No, sir.
Q. Was that a special that Fox sold at advanced admission prices?
Mr. McConnell: I object to leading the witness as to what it is or is not.
The Court: I guess it is a little leading.
Mr. Seeley: I will see if we can get to it without
1600 giving any hints.
Mr. McConnell: You have already told him the answer. Let him go ahead and answer it now.
The Court: He might as well answer.
Mr. Seeley: All right.
Q. Was that sold in a different way, as far as admission prices go, than the ordinary run of pictures that Fox sold?
A. Not so far as admission prices are concerned.
Mr. Seeley: I think that is all. In spite of the leading, he gave a different answer than I expected.
The Court: Maybe you didn't lead him the right way.
Mr. Seeley: Maybe my information or memory was at fault.

Cross-Examination by Mr. McConnell.

Q. You say you had many discussions with Mr. Salkin?
A. Yes, sir.
Q. But you cannot remember any specific dates, or the subject matter of any of the exact conversations of any of these conferences?
1601 A. No, sir.
Q. Did you make any memoranda of your conferences?
A. No, sir.
Q. Did you make any daily reports of them to anybody?
A. No, sir; we have no daily reports.

Q. All of your negotiations are carried on orally, are they not?

A. Yes, sir.

Q. There is no writing back and forth in these matters?

A. With the possible exception of a quotation sheet or prices that I may leave.

Q. Aside from that, the normal course is to negotiate these things orally back and forth?

A. Yes, sir.

Q. How long have you known Mr. Mager?

A. Possibly seventeen or eighteen years, or more.

Q. Mr. Mager was present at some of these conferences, wasn't he?

A. I remember of only one.

Q. Only one?

A. That is all.

Q. Where was that?

1602 A. At the Allied office.

Q. And when?

A. That was about three years ago, three or four years ago, I think.

Q. What time of year, do you remember?

A. Oh, prior to our selling season in this business, which was the fall of the season.

Q. Now, when you went out to sell in this territory, this south side territory, you were familiar, were you not, with the clearance which Balaban & Katz and Warner Brothers had over the other theaters?

A. Yes, sir.

Q. And there was no secret about that in your office, your salesmen knew it, didn't they?

A. Well, I don't know if they all knew it. I knew what the clearance was; I, at least, knew what the previous season was.

Q. Clearance is renegotiated each season, is it not?

A. Yes, sir.

Q. And the clearance for the Balaban & Katz theaters is negotiated at the time of the selling of the loop runs, isn't it?

A. At the time—well, the loop run is not any 1603 different than the others. I think the whole clearance setup is negotiated at the same time.

Q. And the loop runs are negotiated prior to the subsequent runs, are they not?

A. I don't know.
Q. You don't know that?
A. No, sir.
Q. You never learned that in twenty-five years?
A. No, sir.
Q. Were you present here in court when Clyde Eckhardt testified the other day?
A. No, sir.
Q. Now, you did sell "How Green is my Valley" to the Jackson Park Theater in "C" week?
A. Yes, sir.
Q. Did they ask for the picture in "C" week?
A. No, sir.
Q. You just gave them that as a sort of crumb?
Mr. Seeley: I object to that.
A. No, sir.
Mr. Seeley: And I ask that it be stricken from the record.
The Court: That may go out.
Mr. McConnell: Q. Did you talk to Mr. Eckhardt 1604 at any time about his conversation in which the Jackson Park Theater wanted "C" week in 1940?
A. Did I talk with Mr. Eckhardt regarding what?
Q. The Jackson Park requesting "C" week from him in 1940?
A. No, sir.
Q. You don't know that he testified that they requested it from him in 1940?
Mr. Seeley: I object to that.
The Court: Objection sustained.
Mr. McConnell: Q. Did you know about such conversation at all?
A. No, sir.
Mr. Adcock: There is no evidence of any such conversation.
Mr. Seeley: The court has sustained the objection.
The Court: I sustained it.
Mr. Adcock: Pardon me. I didn't hear your Honor.
Mr. McConnell: Q. Who did you talk to about your testimony here today prior to the time of your coming into court?
A. Mr. Seeley.
Q. Anybody else?

A. No, sir.
1605 Q. When did you talk to him?
A. It was last Friday night.
Q. Did you talk to anybody about it prior to that time?
A. No, sir.
Mr. McConnell: That is all.
Mr. Seeley: That is all.
(Witness excused.)
Mr. Seeley: That is all I have now. Some of the other counsel will carry on.

HARRY MANDEL, called as a witness on behalf of defendant Vitagraph, Inc., et al, having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. O'Brien.

Q. What is your name?
A. Harry Mandel.
Q. Where do you live?
A. 7735 Cornell Avenue, Chicago.
Q. That is on the south side of Chicago?
A. Yes, sir.
Q. How long have you lived south?
1606 A. From the date I came into Chicago and that is about seven years ago.
Q. You are working for Vitagraph, Inc.?
A. Yes, sir.
Q. In what capacity?
A. As a salesman.
Q. For how long has that been true?
A. For the past four years, approximately four years.
Q. You became a salesman in what year?
A. I believe it was in November of 1940.
Q. And was there sometime when you worked the south side theaters?
A. Yes, sir.
Q. What period was that?
A. I believe from the early part of November, 1941 until sometime in 1942.
Mr. O'Brien: Read the answer.
(Answer read.)

Q. Were you present in court this morning when Mr. Rose testified?

A. Yes, sir.

Q. Did you two work under a branch manager from November of 1941 to April, I believe you said, 1942?

1607 A. Do you mean was Mr. Rose my superior?

Q. Whoever it might be?

A. Yes, sir.

Q. During that time, it was Mr. Rose?

A. That is right, sir.

Q. And during that time, did you call on the Jackson Park Theater?

A. Yes, sir.

Q. For what purpose?

A. Well, I was selling the south side of Chicago.

Q. Tell the jury.

A. I was selling the south side, in the city of Chicago, and the Jackson Park Theater was in my zone. I was responsible for the representation of Warner Brothers Pictures in the Jackson Park, as well as other theaters on the south side of Chicago.

Q. Were any of those theaters, for the selling of which you were responsible, playing in any week earlier than "C" week?

A. Yes, sir.

Q. Can you name one that was playing an earlier than "C" week?

A. The Rainbow Theater was one; the Marshall Square Theater was another one.

1608 Q. What week were they playing?

A. "C" week of Chicago release.

Q. Did you sell any earlier than that week of release?

A. No, sir.

Q. Prior to the time you became a salesman, had you also worked for Vitagraph?

A. Yes, sir.

Q. In what capacity?

A. I worked for Warner Brothers all the time from the time I left school.

Q. Just before you became a salesman, what were you doing?

A. I was a booker.

Q. Will you tell the jury briefly what a booker is?

A. A booker's responsibility starts where a salesman's

responsibility finishes. A booker has to carry out the contract made between the exhibitor and the salesman, to see that the contract is lived up to and liquidated as it is written, and various other clerical responsibilities which go with the job.

Q. Now, in your capacity as a booker, is it part of your job to see that the pictures which the south side
1609 houses had contracted to play were played by those houses?

A. My responsibility was only to my own particular contractor.

Q. What I mean is, was it part of your duty to see that the pictures which they agreed to play were played?

A. Yes, sir.

Q. And from your work in that capacity, had you become familiar with the run which the south side theaters in your zone had contracted to buy from various distributors?

A. Not generally, but through my work, I could see the newspapers, and I could pretty well tell where theaters were playing various products; I mean, it was not a definite part of my job to know.

Q. I don't care for that. When you went out to sell the Jackson Park Theater, or prior to that time, did you have any directions from the branch manager?

A. I don't quite understand that question.

Q. Had the branch manager said what prices you were to request for the pictures?

A. Well, we generally sat down when we made
1610 what we called an itinerary for our week's work, what accounts we would visit, we would go over each situation individually and discuss the situation as it stood at that time, and he would advise me as to what he expected me to accomplish in a situation.

Q. When you say "accomplish," you mean, I take it, what film rental—

A. He anticipated in that particular zone, yes.

Q. And from each theater?

A. Yes, sir.

Q. How about run, or clearance, was anything said about that?

A. The run was set up, it was an established run, precedent had always had the run as it was in the past,

and my instructions were to sell just as they had been sold in the past.

Q. Did you have a reference to a cut-off record to show where a particular theater had played Vitagraph product in the past?

A. I had a cut-off in every situation in my zone.

Q. Of Vitagraph products?

A. Of Vitagraph products.

Q. Who did you talk to at the Jackson Park Theater?

1611 A. Mr. Salkin.

Q. Richard Salkin?

A. Yes.

Q. In court, here? When did you first try to sell him product at the Jackson Park Theater?

A. I made my first call at the Jackson Park sometime in December of 1941.

Q. Now, suppose you tell the jury what was said in that conversation, both by you and by Mr. Salkin? I assume nobody else was present, or was there someone there?

A. Mr. Salkin was alone at the theater.

Q. Tell the jury what was said?

A. I called on Mr. Salkin, and it was my first call. Dick—I have known Dick ever since I have been in Chicago, and he was very happy to see me, and—

Mr. McConnell: I object to what he was happy about.

Mr. O'Brien: I want to know what was said. If he said that, say that he said it. But, don't you put in that.

A. I assume he was, I don't know.

Mr. McConnell: I think the assumptions have

1612 been ruled out in this case.

Mr. O'Brien: Yes. I object to any assumption, myself.

A. I went up to the Jackson Park Theater and Dick was there, and we talked for awhile.

He congratulated me on being made south side salesman. He said, "Unfortunately, you and I are going to have a little trouble."

I asked him why.

He said that we wanted too much money for our pictures. That was about the size of it.

Q. Did you sell him anything that day?

A. Pardon?

Q. Did you sell him anything that day?

A. Oh no, nothing at all.

Q. And was anything more said on that day?

A. I don't think anything, aside from the fact that my pictures were too expensive; I mean, he thought that the price was too high.

Q. Did you tell him what the price was?

A. We never actually got into a deal on the first call that I made.

Q. When did you next see him?

1613 A. I believe the following week, following Monday.

Q. Were you again alone?

A. Yes. Mr. Salkin was alone at the theater.

Q. Tell us what was said then, what did you say and what did he say?

A. We went into Mr. Salkin's office. We talked for a few minutes and I told Mr. Salkin that there was no reason why we couldn't get together.

Again, he told me that he was paying too much money for Warner pictures. I believe that at that time he told me that the prices that we had been receiving in the past were prices that he could be paying in "C" week of Chicago release.

Of course, nothing happened; I mean, I took my bag—

Q. You didn't sell him on that trip?

A. No.

Q. At this time, in 1941, were you selling a whole year's product?

A. No, sir, we were selling five pictures at a time, under a new type of selling.

Q. Did you come back again—withdraw that.

Let me ask you, first: When Mr. Salkin made that observation, did you know what your other "C" ac-

1614 counts were paying for the same pictures that you were talking about in the discussion there?

A. Yes, sir.

Q. And is it true that the amounts which they were paying for those pictures in first week, or, I should say, in "C" week, was about the same as the prices you were asking of Mr. Salkin?

A. Well, as I remember, I think I told Dick that he was nuts, they were paying three or four times what he was for pictures in "C" week of release.

Q. Did you sell him anything that day?

A. No, sir.

Q. Did you come back again?

A. I think the next time I saw Mr. Salkin was on film row, which was around 13th and Wabash, and I talked to him again. I told him that I was charged with the responsibility of selling this theater and I would like to sit down and negotiate with him, and Dick said he would come up to see me in a few days, which he did.

Q. To your office?

A. To our office, yes, sir.

Q. Do you remember when this was, about?

A. Well, I cannot tell you what the date was,
1615 but I can tell you approximately. It was during the last week of December, it was during the Christmas holidays, I remember that very definitely, and Dick came up with Mr. Mager and they talked to me about a deal, and I told them the only way we could negotiate would be predicated on the past rentals that we had received for film.

Q. You mean Mr. Mager of Allied?

A. Yes, Mr. Mager of Allied.

Q. Yes.

A. I told him that was the only way we could negotiate, that we could not go any further than that, because it was not within my authority to go any further.

Q. What had they said, and what did they say?

A. They came up and talked to me about making a deal

Q. Tell us what they said, if you remember?

A. Again, the crux of the entire conversation was the film rental, that the film rental we were asking was too high, and that business was poor, and that they wanted some consideration, they wanted a reduction in the rentals.

Q. Was anything bought that day?

1616 A. Well, I went into Mr. Rose, who was my superior, and told him Mr. Salkin and Mr. Mager were in my office, and I acquainted him with all the details as to what our negotiations were, what had transpired up to that point.

I think at that time Mr. Rose talked to Mr. Mager and Mr. Salkin in Mr. Rose's office.

The upshot of the conversation was, on the strength of what Mr. Salkin—

Mr. McConnell: Are you talking about conversation at which you were present?

A. Yes—I was not present during the entire conversation.

Mr. McConnell: I object to the part he was not present at.

Mr. O'Brien: That is quite all right. I don't want him to testify to anything but what he heard.

A. They had a conversation at which I was not present. Then Mr. Rose called me in his office. I don't know, I am not certain whether it was in Mr. Rose's office or Mr. Lorenz's office, our district manager, but they said, "Harry, go ahead."

Q. Who was present?

A. Mr. Salkin. I don't think Mr. Mager was
1617 present any more; it was Mr. Salkin, Mr. Rose, Mr. Lorenz and myself. Mr. Lorenz and Mr. Rose, either one, called me in—"Make up the deal"—and they handed me a revised schedule of prices whereby we would reduce the rental from the first group of pictures that I was trying to sell them.

Q. And did you sell them at the reduced price?

A. Yes, sir.

Q. Now, outside of the occasions which you have mentioned, I should say the occasion which you mentioned when Mr. Salkin said that he ought to be able to play in "C" week for the prices you were asking, did you ever have any conversation with either he or Mr. Mager, or anyone else, in which the question of the "C" week was used in connection with the Jackson Park Theater?

A. I would say never directly, no, sir.

Q. What do you mean by "directly"?

A. Well, it is a common practice in selling pictures, or negotiating a deal, for the exhibitor to say—

Mr. McConnell: I object to the common practice.

Mr. O'Brien: That is all right. You may cross-examine.

1618 The Court: Suppose we take a recess for ten minutes. We have been working since half past one.

(A short recess was taken.)

Cross-Examination by Mr. McConnell.

Q. You referred to two conversations which you thought you could pretty well fix the date on. What was the first of those, now?

A. The early part of December.

Q. Can you fix that any closer than that?

A. Well, sir, the reason that the dates are fairly clear in mind—

Q. I don't care for the reasons, why they are fairly clear in your mind. I want to know if you can fix it any closer that that?

A. Possibly the first week in December was—the first week.

Q. Do you remember who you called on the day before?

A. The day before was Sunday. It was—I know it was Monday, and probably the first week in December. The reason I remember that is that I lived a few blocks from the theater and I stopped on my way home.

1619 Q. You have lived a few blocks from the theater a long time, haven't you?

A. No, sir, I moved further south when I was made the south side salesman.

Q. When was that?

A. I don't know whether it was May or October that we moved from the Hyde Park district out into what is called the South Shore.

Q. That is a pretty good gap, from May to October. Can you fix it, any date closer than that, as to when you went into your new job?

A. I know when I went into the new job.

Q. When was that?

A. November, as south side salesman.

Q. You don't know when you moved away from Hyde Park, whether it was May or October, is that it?

A. That is right. I am pretty certain it was May, but I would not take an oath on it.

Q. That was a more important event in your life than this call on Mr. Salkin, wasn't it?

A. No, sir. Am I at liberty to tell you why it was not?

Q. Not unless I ask you.

A. All right.

1620 Q. Your counsel can ask you. Who did you call on the next day after this talk?

A. That is a difficult question, but I think it was the Gayety and Gaelic theaters.

Q. Do you remember about those conversations?

A. Then I was turned down.

Q. Are you able to say that it was the next day?

A. I told you, sir, as close as I can remember, it was the Gayety and Gaelic theaters, within that week, because I remember what my routes were.

Q. When was the next conversation that you had?

A. With Dick, the following week.

Q. That was down at your office?

A. No, that was out at the theater.

Q. Who was present at that time?

A. Dick and myself.

Q. What day was that?

A. I am pretty sure that was a Monday.

Q. When was the next time?

A. Probably the following, possibly the following week.

Q. Well, do you know, or are you just guessing at it now?

Mr. Adcock: I object to that.

1621 Mr. McConnell: He says "Possibly" or "Probably," and I want to know whether he can fix it definitely.

A. I cannot fix it definitely. The only thought that is in my mind is this, that pictures were becoming available for the Jackson Park and I had to sell that situation in a hurry, or those pictures were going to go past his week of release.

Q. You have three conversations, now, each on a Monday—right?

A. I think so, I think they were all Monday.

Q. When did you have this conversation where Mager was present?

A. That was probably during Christmas week or, rather, the week after Christmas.

Q. Was that prior to these conversations, or later?

A. That was after. I met Dick on the street, and I talked to him. He says, "All right, I will come up and see you."

He came up with Mr. Mager.

Q. That is the time he had the talk with Mr. Rose?

A. As far as I know, that is the time he had the talk with Mr. Rose, because I called Mr. Rose out and they went into Mr. Rose's office.

1622 Q. You saw them go into talk with Mr. Rose on that day?

A. Yes, sir.

Q. You said that you had a cut-off with reference to t release dates in your zone, is that right?

A. Release dates?

Q. Well, what is it? Did you have a cut-off?

A. Yes, sir.

Q. What is a cut-off?

A. A cut-off is a record almost—not almost, it is a dire duplicate of the previous year's signed contract.

Q. Of each theater?

A. Of each theater.

Q. Did you know anything about the clearances whi the Balaban & Katz and the Warner Brothers theaters h over the theaters you were selling?

A. No.

Q. You didn't know anything about that?

A. Nothing further than what my information, n knowledge around the office was that I had received.

Q. Didn't you have some information, amound t office?

1623 A. I never booked the city, I was a country book

Q. But there were theaters in your district whi had a clearance over the theaters which you were sellin

A. In other words, in so far as my selling is concern is that what you are talking to?

Q. Yes, I am talking about your selling?

A. The only information I had in connection with t theaters I was selling was the clearance as had been esta lished on the previous contract, which was on the face my cut-off.

Q. You had no other information of any kind from yo office?

A. No.

Q. With reference to Balaban & Katz and Warn Brothers clearances?

A. No, sir.

Q. You had not learned that indirectly, or any oth way?

A. I knew where the Tower played; I knew where t Tivoli played, because I live in the neighborhood, and knew where their pictures were playing.

Q. Do you have a map in your office giving the playi

position of all these theaters, including Balaban &
1624 Katz and Warner Brothers' position?

A. Giving the playing positions?

Q. Yes.

A. No. We have a map, but not that kind of map.

Q. What kind of map do you have?

A. Just showing the location of the various theaters.

Q. Does it show the minimum prices on it?

A. I think it does.

Q. You know what the minimum admission prices for the different runs are, don't you?

A. Yes, sir.

Q. And the contracts that you used, you have a chance to compare them and look at them from time to time, the form contracts?

A. Sure, they are at my service any time I want them. I carry a pad with me and I have a pad on my desk.

Q. All those contracts, those printed contracts, carry a provision in them, do they not, that if the theater plays below a certain minimum admission price, it forfeits its run?

A. I am not an attorney; I couldn't tell you. It is an awfully long contract with a great many clauses.

1625 Q. Have you ever read it?

A. I have tried to, but it is too confusing.

Mr. McConnell: I agree with you on that. I think that is all.

1626 *Redirect Examination by Mr. O'Brien.*

Q. Just one question, Mr. Mandel:

Was there something you wanted to say about moving?

A. Pardon?

Q. Was there something you wanted to say about moving, that impressed that on your mind, the time?

A. Well, the only thing—the reason I feel that I know that I called on the Jackson Park, the first call was that particular Monday, the first week of December, we had a picture coming available in the next few weeks—

Mr. O'Brien: That isn't what I asked you.

The Court: Q. How do you remember the time you moved?

Mr. O'Brien: Q. How do you remember or forget, is what I want to know.

A. Well, Judge, that's very simple. I had been told in advance that I was going to be made the South Side salesman, and since I was going to be on the South Side, I thought it would be best to find a place to live in the middle of my territory, or that would be easier for me to work from. And when we found the apartment, I moved, that's all.

1627 Mr. O'Brien: Well, I just wanted to know if your wife bought some new curtains, that's all.

That's all.

(Witness excused.)

1628 IVORY H. BARRON, called as a witness on behalf of the Warner Bros. Circuit Management Corporation, and having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. O'Brien.

Q. What is your name, please?

A. Ivory H. Barron, B-a-r-r-o-n.

Q. Where do you live, Mr. Barron?

A. 7801 Ridgeland Avenue, Chicago.

Q. Is that on the South Side?

A. Yes, sir.

Q. And how long have you lived there?

A. Almost—I have lived there three years.

Q. And you are employed by Warner Bros. Circuit Management Corporation?

A. That's right.

Q. And have been for how long?

A. Since November 15th, 1930.

Q. In what capacity are you presently employed by it?

A. Office manager.

Q. Whom do you work under?

1629 A. Mr. Coston.

Q. And has that been true during all the time you have been there?

A. Yes, sir.

Q. Was your answer yes?

A. Yes.

Q. Will you tell the jury briefly what your duties are as office manager?

A. Well, the duties of an office manager in the Theatre Department is to supervise the accounting records kept in the Branch, and also I handle lease negotiations, bond reorganizations, and generally assist Mr. Coston in his work of running the theatres.

Q. And is it part of your work to get out to the theatres from time to time?

A. Yes, sir.

Q. How often have you done that over the years?

A. Well, before gas rationing I used to go out around the theatres at least two to three times a week; but since that time I haven't been making them so often, perhaps three or four times a month.

Q. I take it that you are fairly familiar with the Warner houses on the South Side?

A. Yes, sir.

1630 Q. Did I ask you to procure for use in this trial photographs of the houses which have been mentioned here?

A. Yes, sir.

Mr. O'Brien: I will ask the Reporter to mark this book Warner's Exhibit 11 for identification.

(Document marked Warner's Exhibit 11 for identification, as requested.)

Q. And did you arrange to have such photographs made?

A. Yes, sir.

Q. By whom?

A. Kaufman & Fabry.

Q. I show you book of photographs marked Warner's 11 for identification, and ask you to examine it and state if those are the photographs which you so procured?

A. Yes, sir.

Q. And will you state what theatres these pictures relate to, and what views of each of the houses shown?

A. On the Avalon there is the outside, the exterior view; there is the interior of the auditorium view, and a lobby view.

1631 On the Grove, the same three views.

On the Jeffery, the same three views.

On the Hamilton, the same three.

On the Shore, the same three.

And on the Capitol, there is no exterior view, but the auditorium and the lobby.

Q. Do the pictures correctly reflect the views which you have mentioned of the different houses?

A. Yes, sir.

Mr. O'Brien: I offer the book with the collection of pictures as Warner's Exhibit 11.

The Court: Any objection?

Mr. McConnell: I object to the book.

The Court: Why?

Mr. McConnell: I think we are entitled to have the photographer here so we can cross examine.

The last time I let one go in without the photographer, we found out that Mr. Immerman didn't know anything about it, and we couldn't cross examine.

Mr. Adcock: I think that was all explained on redirect.

Mr. O'Brien: I will be glad to bring the photographer—

1632 The Court: I don't remember antyhing like that arose when the last book went into evidence.

Mr. McConnell: I asked Mr. Immerman if he knew anything about them—

The Court: I understand that, but when it was presented, I didn't understand you objected at all.

This book is now presented, and it will be admitted into evidence.

(Whereupon said book so offered was received in evidence as WARNER'S EXHIBIT 11, and was presented to the jury for inspection:)

1635 Q. And did you at my request, Mr. Barron, prepare a list of the various theatres in which—rather, which Warner Bros. Circuit Management Corporation has operated at any time during or since the year 1930?

A. Yes, sir, there was such a list prepared in my office.

Mr. O'Brien: Will you mark this Warner's 12 for identification, please?

(Document marked as Warner's Exhibit 12 for identification, as requested.)

Q. Is the list marked Warner's 12 for identification, which I now show to you, that list or a copy of it?

A. Yes, sir.

Q. Will you explain for the record—I will shorten it. There are various letters or symbols apearing in the squares opposite the name of each of the theatres, are there not (indicating)?

A. Yes, sir.

Q. And at the bottom of the page is a key, showing what those symbols or letters mean and stand for; is that correct?

A. That's right.

1634 Q. Were you in court here when the Balaban & Katz list of theatres was referred to?

A. No, sir.

Q. Does this list correctly set forth all of the theatres which the Management Corporation has had anything to do with during or since 1930? I mean in Chicago, of course?

A. Yes, sir.

Q. Some of the theatres listed, namely, the Buckingham, the Harvard, the Julian, the Appolo, and the Shakespeare are no longer operated by Warner Bros. Circuit Management Corporation, is that true?

A. That's right. That's right.

Q. And does this Exhibit 12 for identification correctly state the date or dates on which the various theatres went to a double featuring policy, wherever they did?

A. Oh, yes. Yes, sir.

Mr. O'Brien: I offer the list as Warner's 12 (submitting exhibit to Mr. McConnell for inspection).

Mr. McConnell: I have no objection to the document.

The Court: It may be admitted.

(Said document so offered was received in evidence as WARNER'S EXHIBIT 12, and is in words and figures as follows:)

1635 Mr. O'Brien: And will you mark these two sheets —show that they are two sheets—Warner's Exhibit 13 for identification.

(Compilation consisting of two sheets was marked as Warner's Exhibit 13 for identification, as requested.)

Q. And did you prepare at my request the schedule showing the admission prices charged at the Avalon, Grove, Jeffery and Shore Theatres from the year 1930 down to the year 1942?

A. Yes, sir.

Q. I show you two sheets purporting to relate to admission prices obtaining in those years at those theatres, marked Warner's 13 for identification, and ask you to state if that is the list or schedule which you prepared?

A. That's right.

Q. And where did you obtain the information which appears upon it?

A. We obtained the information from our income records for all the periods that are set forth on the statements.

Q. And do the sheets correctly state the admission prices as shown by those records—

1636 A. Yes, sir.

Q. (Continuing) —for the periods I have mentioned.

I offer as Warner's 13 the schedules (submitting exhibit to Mr. McConnell's inspection.)

Mr. McConnell: I have no objection to the documents.

The Court: They may be admitted.

(Compilation consisting of two sheets so offered was received in evidence as WARNER'S EXHIBIT 13, and are in words and figures as follows:)

1637 Mr. O'Brien: Mark this Warner's 14 for identification, please.

(Document marked Warner's Exhibit 14 for identification, as requested.)

Q. Mr. Barron, when and if improvements are made upon these theatres in the way of capital additions or repairs and maintenance, as the case may be, are you familiar with the nature and extent of the work which is done?

A. Well, not altogether. We have a maintenance man, who handles the mechanical parts of supervising the job and doing them; but eventually, if it is of major importance, I will become acquainted with it by visiting that theatre.

Q. And are you familiar with the cost in any given case and with the nature of the work which is done?

A. Yes, when the bills are paid, or when the bids are submitted and the orders are let, I am acquainted with the costs at that time, and then when the bills are paid.

Q. Now, can you tell us whether there were any—whether there was any work done at the Avalon, Hamilton, Jeffery, Grove and Shore theatres?

A. Well, at the Avalon Theatre—

1638 Q. Just yes or no.

A. Oh, I misunderstood you. Pardon me?

Q. Was any work done?

A. Was any work done?

Q. At those theatres?
A. Yes.
Q. Did you prepare at my request a schedule showing the dates of the installation of refrigeration at the various houses, and showing also any work or changes or improvements which have been made at the houses of a major nature since Warner's acquired the properties?
A. Yes, sir.
Q. I show you Warner's 14 for identification, and ask you to state if that is the schedule which you so prepared?
A. It is.
Q. Now, in the case of the Avalon, I note that the refrigeration installation was in 1927. And in the case of the Grove, your records show the refrigeration to have been installed in 1928. And the same in the case of the Shore, as to refrigeration?
A. That's right.
Q. That was before Warner's acquired the houses?
1639 A. Yes, sir.
Q. But with those exceptions, the other items shown are items which were installed or work which was done after 1930, are they not?
A. That is right.
Q. Do you know whether any seats were installed at any of the theatres which I have mentioned?
A. Yes, sir.
Q. Will you tell us in which of the theatres?
A. Well, the Jeffery has had new seats installed; the Avalon has had new seats; the Shore had had new seats; the Grove has had new seats; and the Hamilton has been re-seated.
Q. How about refrigeration, installation of refrigeration at the Hamilton? Has there been any?
A. Yes.
Q. Since you acquired it?
A. Yes, sir.
Q. When was that?
A. I believe it was in 1935.
Q. And were there any other changes at the Hamilton of a major nature since you acquired it?
A. Yes. The lobby was modernized, and a new canopy was installed on the front, a modern canapy, and
1640 there has been—and the inner foyer has been, well, it isn't exactly modernized, but it was brought up to

date by painting and rearranging it; and there has been new carpets throughout the house. Formerly the outer lobby was asphalt tile and it is now carpet.

Q. Well, to shorten it, Mr. Barron, I will ask you to state at this time if the work mentioned in this exhibit 14 for identification as having been done after Warner's acquired the theatres was done, to your knowledge?

A. Well, with the exception of those refrigeration items.

Q. Yes, I have omitted those.

A. Yes, sir.

Q. And where the costs—or do the costs amount to the figures which you set down on this exhibit?

A. Yes, sir.

Mr. O'Brien: I offer it as Warner's 14.

(Submitting exhibit to Mr. McConnell for inspection.)

If there is any objection, Mr. McConnell, to the items of refrigeration which went in before the Warner acquisition date, I have no—I don't mind eliminating those
1641 and reading the rest into the record later.

Mr. O'Connell: I have no objection to them or to the document.

The Court: All right. It may be admitted.

(Whereupon said document so offered was received in evidence as WARNER'S EXHIBIT 14, and is in words and figures as follows, towit:)

1642 Q. Do you know the number of employees at the Jeffery Theatre at the present time?

A. No, not offhand, I don't.

Q. Did you prepare a sheet showing the number of employees and their positions for the years 1937 to 1943?

A. Yes, sir.

Q. By the way, when I mentioned these years, are the Warner Circuit Management records on a calendar basis or on a fiscal year basis?

A. They are on the fiscal year basis.

Q. And what is the fiscal year?

A. The fiscal year—our fiscal year starts with the first Sunday after the last Saturday of August, and runs until the last Saturday of August the following year.

Q. So that when we say the year '37, we mean—

A. I mean from that Sunday before the end of August, the last Sunday in August in '36 to the last Saturday in August, 1937.

Q. So the first four months are in—in that case the first four months are in one year?

A. That's right.

Q. And the last eight months in the new year?

1643 A. That's right.

Q. And we refer to the year by the one which has the most months; right?

A. That's right.

Mr. O'Brien: Mark this 15 for identification.

(Compilation marked as Warner's Exhibit 15 for identification, as requested.)

Q. Is the instrument marked Warner's Exhibit 15 for identification the list of the employees and their positions?

A. Yes, sir.

Q. I believe you said something to me today about the electricians. Does this correctly show the number of the electricians?

A. Yes. We have one electrician, an electrician that services this house (indicating), as well as four other theatres. This is the Jeffery, I am referring to.

Q. And he is not shown on this list?

A. No. In addition to that, we have an additional electrician, who handles and supervises all of the electrical work, and this man is under his jurisdiction.

Q. You mean the man who is indicated on the list?

1644 A. That is indicated on the list is under his jurisdiction.

Mr. O'Brien: All right. I offer this as Warner's Exhibit 15. (Submitting exhibit to Mr. McConnell for inspection.)

Mr. McConnell: I have no objection.

The Court: It may be admitted.

(Compilation so offered was received in evidence as WARNER'S EXHIBIT 15, and is in words and figures as follows:)

1645 Mr. O'Brien: This will be 16 and 17.

(Compilation marked Warner's Exhibits 16 and 17 for identification, as requested.)

Mr. O'Brien: I am sorry to go through with all this detail, your Honor; I thought I would get it out of the way, and then the witnesses could go along. We have to get it in the record.

Q. Now, do you keep a record of the box office receipts of the Avalon, the Jeffery, Hamilton, Shore and Lexington?

A. Yes, sir.

Q. And also a record of the attendance—I beg your

pardon; I should mention also the Grove, Highland, Cosmo, and Capitol?

A. That's right.

Q. And do you keep a record also of the attendance at those houses?

A. We do, yes, sir.

Q. And have you prepared at my request, from the records of the company, a schedule showing the box office receipts and the attendance—strike "and the attendance" —for the years 1931 to 1943?

A. Yes, sir.

Q. And a schedule of the attendance at the same 1646 houses for the years 1936 to '43?

A. Yes, sir.

Q. Are Warner's Exhibits 16 and 17 for identification the schedules which you have so prepared?

(Witness examines exhibits).

A. Those are the schedules.

Q. I notice on both of those exhibits, under the major figures set forth, a small figure in each instance, both as to attendance and as to box office receipts. (Indicating). What do those small figures indicate?

A. Those small figures indicate the percentage of increase or decrease in box office receipts and attendance over the previous year.

Q. In each case, in relation to the previous year?

A. That's right.

Q. And did you calculate those percentages yourself?

A. No, sir. They were calculated by a competent comptometer operator in my office.

Q. Under your supervision—

A. Under my supervision.

Q. (Continuing) —and direction?

A. That's right.

Mr. O'Brien: I offer these sheets as Warner's 1647 16 and 17 (submitting exhibits to Mr. McConnell for inspection).

Mr. McConnell: Is the Lexington Theatre owned by your company?

Mr. O'Brien: Not any more, but down to that time it was.

Mr. McConnell: Oh, I see; it was disposed of.

I have no objection to the documents.

The Court: They may be admitted.

(Compilations so offered and received in evidence as

WARNER'S EXHIBITS 16 and 17, respectively, and are in words and figures as follows:)

1648 Mr. O'Brien: Q. You had "Bank Night and give-aways of one kind or another out at these South Side houses, or most of them, didn't you, Mr. Barron?

A. Yes, sir.

Q. Including the Jeffery?

A. Yes, sir.

Q. Do you recall when it was that you started that practice and when you discontinued it, at the Jeffery?

A. The Jeffery started "Bank Night" in December, 1935. It discontinued "Bank Night" in December, 1936.

Q. Was it December, 1935, when it commenced?

A. Well, that particular house started it, I think it was December 20th. I believe it was December 20th. No—yes, 1935, December 20th, is the date it started.

Q. Have you made at my request, a schedule or compilation showing the weekly receipts over the "Bank Night" period, and the corresponding receipts for the same period which followed the cessation of "Bank Night?"

A. Yes, sir. At the Jeffery?

Q. I mean for the Jeffery.

Mr. O'Brien: Will you mark this 18 for identification.

1649 (Compilation Warner's Exhibit 18 was marked for identification as requested.)

Q. I will show you Warner's 18 for identification, and ask you to refer to it and tell us how you went about preparing that compilation, what was done, and what the figures purport to show.

A. Well, the information was taken from the income records which we keep and maintain in the, or on the Jeffery Theatre; and we started out by taking—this is—

Q. When you say "We", whom do you mean, Mr. Barron?

A. My assistant and I. I called the figures and he wrote them down, or he called them and I wrote them down, one or the other.

Q. When did you do that?

A. Do you want me to tell you?

Q. Yes.

A. Well, we finished at about 2:15 this morning.

Q. All right. Will you tell us what you did?

A. On these records we have, it shows the date, the day of the week of the activity, and also the film that is played.

1650 Q. What kind of activity?

A. Whatever it is; that is, whether it is "Bank Night" or "Screeno" or any other game.

Q. All right, go ahead.

A. We found that this house, starting with the first week of January, 1936, had one of these activities one day a week for the first week of that year.

Q. I don't want to know what your findings were, but just tell us what the procedure was. What—

A. Well, we took the total—we took the box office receipts in each week of the days' activities—in other words, if there was two "Bank Nights" in that week, we would add those two days' receipts together, and put them on this schedule.

Q. On one side?

A. On the—in the first column (indicating).

Q. All right.

A. Then we took the total weekly receipts for that week and showed that in the second column.

Q. Yes.

A. Then that went through for the entire year, the calendar year—this is the calendar year of 1936.

Q. Not a fiscal?

A. Not a fiscal. The reason we took the calendar
1651 year was because we had run "Bank Night" or we had run these activities the entire year of 1936.

Q. All right.

A. The whole fifty-two weeks.

Then we set down next to those two compilations for the calendar year 1937, the box office receipts on the same days of the week that we had those attractions the previous year. In other words, if we run "Bank Night" on Wednesday and Friday in 1926, in 1937 we took the total receipts for those two days and put those in the first column for 1937.

We then took the—we took the total weekly receipts by weeks for 1937 for the corresponding weeks, and reflected them on this schedule.

Q. Just as you had done for '36?

A. In the same manner as 1936 was compiled.

Q. All right. An having done all of that, what did you do?

A. Well, after getting the entire year's results down, we totaled them, in order to arrive at a total for the 104 weeks of activity in 1936—I mean—pardon me,
1652 the 104 days of activity in 1946—or in 1936; and the same 104 days in 1937. And then the total for the year.

Q. Now, when we come to the totals, tell me, first, what the total receipts were for the calendar year 1936, during which you had "Bank Night," or other give-aways.

A. $222,673.58.

Q. Now, tell the jury what the total receipts were during the following year, 1937, when you did not have "Bank Night?"

A. $170,413.63.

Q. And what is the difference in dollars between the results for those two years?

A. $52,259.95 decrease in 1937.

Q. And how much—did you calculate to see how much of that fifty two thousand differential over the whole year as against the whole of the preceding year arose on the 104 nights which were related to the 104 nights of 1936 when you did have "Bank Night" or give-aways?

A. The 104 nights, corresponding nights in 1937, in those 104 nights the box office receipts dropped $40,858.19.

Q. That is, out of the total of fifty two thousand
1653 for the year—

A. Yes, sir.

Q. (Continuing) — approximately forty-one thousand was on those 104 nights?

A. That's right, sir.

Mr. O'Brien: I offer the compilation as Warner's 18.

Mr. Adcock: May I ask a question in connection with the introduction?

Mr. O'Brien: Surely.

Mr. Adcock: Q. Was there any compilation made, or did you play "Bank Night" at the Jeffery, or use "Bank Night" in 1935?

A. I don't believe so. I think "Bank Night" originally started—oh, in 1935?

Q. Yes.

A. From December 20th, on.

Q. But no considerable time of 1935?

A. No. It was just for that one or two nights there.

Mr. Adcock: That is all.

Mr. McConnell: I have no objection.

The Court: It may be admitted.

1654 (Compilation marked Warner's Exhibit 18 was thereupon received in evidence as Warner's EXHIBIT 18 and is in words and figures as follows, to-wit:)

1655 Mr. O'Brien: Will your Honor excuse me just a moment?

I have no further questions.

The Court: You mean you have finished your examination of this witness?

Mr. O'Brien: Yes, sir.

The Court: This will be a good time to take our adjournment.

We will adjourn until ten o'clock Monday morning. We don't have Naturalization here, so we can start at ten o'clock, instead of 10:30.

(Whereupon an adjournment was taken to Monday, March 6, 1944, at the hour of ten o'clock a. m.)

1656 IN THE DISTRICT COURT OF THE UNITED STATES

* * (Caption) * *

Before Igoe, J., and J.
Monday, March 7th, 1944.
10:00 o'clock A. M.

Court met pursuant to adjournment.

Counsel present:

Mr. McGonnell,
Mr. Korfist,
Mr. Adcock,
Mr. Goldberg,
Mr. Seeley,
Mr. O'Brien.

(And thereupon the following proceedings were had out of the presence and hearing of the jury:)

1657 Mr. O'Brien: Your Honor, might we take a few minutes in chambers, where we can talk to you about a development which has arisen here?

The Court: All right.

(Proceedings had in chambers, not reported).

Mr. Adcock: If the Court please, the defendants at this time desire to move the Court that the plaintiffs' be required to elect which theory of damages they wish to rely upon. That is, as we understand, there are two theories of damages. There is one based upon the Maryland admissions and the Maryland film rental translated into their other earnings and expenses; and then the other one relates to a base of average yearly profits of the Theatre for four years, I think it was, prior to July 28th, 1937, the beginning of this five year period.

The Court: Keep the jury in a minute, will you please?

The Marshal: Don't you want the jury?

The Court: No.

Mr. Adcock: Now, the authorities seem to be that the jury can not be called upon to determine upon which 1658 method they would use in calculating damages, if they get to that point, and that the plaintiffs are required to elect, based upon the same acts of the defendants as are charged.

The Court: What do you say about that, Mr. McConnell?

Mr. McConnell: Well, my position is, if the Court please, that those theories are alternate theories. If the jury finds this system of release is reasonable, then one system of damages or one theory of damages is applicable. If it finds that the system of release is illegal and unreasonable, then, of course, another theory of damages applies. The theory of lost profits is predicated upon the illegality of the whole system or release. The theory of loss as compared with the Maryland Theatre is predicated on the jury's findings that the system of release was reasonable. It seems to me that is all a question before the jury, as to which theory it bases its decision on.

The Court: You do not believe you have to make an election?

Mr. McConnell: No, your Honor.

The Court: All right; I will overrule the motion 1659 at the present time.

Now, you can bring your jury in.

Mr. Seeley: I have some instructions, here, your Honor. (Handing to the Court).

The Court: These are just yours?

Mr. Seeley: No, I think those are on behalf of all defendants.

Mr. Adcock: We may have some further ones.
Mr. Seeley: Other counsel might have a couple more.
Mr. Adcock: We may have some further ones.
The Court: What is the name of that juror?
Mr. McConnell: Wittleder.
Mr. Adcock: Let the record show that instructions were submitted on behalf of all counsel.

1660 (And thereupon the following proceedings were had in the presence and hearing of the jury:)

The Court: Good morning.
The Jurors: Good morning.
The Court: Over the week-end it has come to the attention of the Court that one of the witnesses to be called is related to one of the jurors. That was unknown to anybody at the time the jury was chosen; and as soon as it was discovered by the attorneys representing the Company at which this man is employed, it was brought to the attention of the attorney for the plaintiffs, and between all of the counsel it has been agreed that because of the close relationship between the juror and the witness, it might be in the interest of justice that the juror be excused from further consideration of this case, counsel having agreed to proceed with the trial with the eleven jurors.

Now, in excusing this lady, it is no reflection upon her, nor is any criticism upon her, nor upon anybody connected with the case. It just so happens that nobody knew that this man was going to be called as a witness, and

1661 nobody had in mind at all that there was any relationship between any juror and any witness who might be called. So without any reflection upon anybody, and with words of commendation for all of the attorneys connected with the case, for the very fine and highly honorable manner in which they have handled this situation, I will excuse Mrs. Wittleder.

Thank you very much for your services.

1662 The Court: Do you folks have another witness?
Mr. Adcock: Yes, Mr. Usher.
Mr. McConnell: There is one witness who has not been cross-examined.
Mr. O'Brien: You haven't finished with Mr. Barron.
Mr. McConnell: He has not been cross-examined.
Mr. Adcock: Yes, sir, that is right. Pardon me.
The Court: Then we will run through until 12 o'clock. We have a monthly meeting of the Judges, of course, at

12 o'clock, and we will have to take an ajournment at that time.

1663 The Court: This young man was on the stand when we adjourned. All right. Have a seat, please.

IVORY H. BARRON, having been previously sworn, resumed the stand, was examined further and testified as follows:

Direct Examination (Cont'd) by Mr. O'Brien.

Mr. O'Brien: I just have one further question, your Honor.

Q. On Friday, Mr. Barron, you testified that the bank night program was first instituted at the Jeffery in December of 1935. Is there anything about that, that you wish to correct?

A. Yes, sir. I would like to correct that statement to September, 1935, was the starting date of bank night.

Q. Was that September 20th?

A. September the 20th.

Mr. O'Brien: All right.

1664 *Cross-Examination by Mr. McConnell.*

Q. Mr. Barron, I show you Warner's Exhibits 16 and 17. Now, those Exhibits, as I understand them, purport to show the percentage of decrease by years of the various theatres, is that correct, or increase or decrease?

A. Percentage of increase or decrease.

Q. Or decrease?

A. That is right.

Q. And is the percentage shown from a base figure or is it shown from the preceding year?

A. The first year of 1931 is used as the base year for the compilation made for 1932. The 1933 percentage is—we used the base of 1932.

Q. In other words, you used the preceding year as the base?

A. We used the preceding year as a base.

Q. But you have not taken one base period?

A. No.

Q. And then figured the percentages from that?

A. No, sir.

Q. Now, you did make a compilation of—I am not going to ask you any more about that—you made a
1665 schedule up concerning bank night, and as I gather, for the net result of that Exhibit you took about four-fifths of the increase for the year of 1936 and assigned that to bank night; isn't that about the way it worked out?

A. No, on that Exhibit—

Mr. McConnell: What is the number of that Exhibit, please?

The Witness: On that Exhibit we show—I believe it is a columnar Exhibit.

Q. You are referring now to—

A. No. I believe it is a columnar Exhibit. On that Exhibit we took the actual receipts—

Mr. McConnell: Just a minute, so we all know what we are talking about.

The Witness. The last page shows it.

Q. You are referring to Warner's Exhibit 18?

A. That is right.

Q. Will you explain how you made your compilation with reference to bank night?

A. On that Exhibit we took the actual days that bank night or other games played in 1936. For example, if bank night played on Wednesday and Friday in 1936, we combined those two nights' receipts and set them
1666 down in the first column on this schedule.

In 1937 we took the Wednesdays and Thursdays of the same week, receipts for those two nights, combined those and set them down on the other—in the column under the 1937 year.

Q. And in that way you arrived at what you thought was a fair allocation of bank night proceeds?

A. No,—

Mr. O'Brien: I object to that, your Honor. All this witness has done is to set down figures. He has not had anything to do with determining the fairness or anything else about it.

Mr. McConnell: Q. Then you are not drawing any conclusions from these. You are just setting figures down, is that it?

A. Setting the figures down of the decrease in those two nights, of those nights of activity in 1936 over 1937.

or the decrease in 1937 over 1936, of those particular nights on which give-aways were played in 1936.

Q. Well, now, as an accountant, do you draw any conclusions from that?

A. Well, I drew the conclusion that those nights dropped off $40,000 over the previous year.

1667 Q. Well, that is a matter of computation, isn't it?

A. That is right.

Q. What conclusion do you draw from that dropping off?

Mr. O'Brien: Well, I object to that, your Honor. He is not put on there as an expert.

The Court: He is sort of an accountant, isn't he?

Mr. O'Brien: Yes, he is, but as to those figures—

Mr. McConnell: I want to find out, if I can, what the purpose of these figures is. He has shown a drop, and I want to know what he assigns that to, whether he assigns it to bank night, or something else.

The Witness: I assign it to bank night, yes.

Mr. McConnell: That is all I want to know. Just one more question.

Q. Your schedule showed that there was a considerable increase in earnings or admissions of the theatres that played bank night during the years that they were playing bank night.

A. That is right.

Q. Now, comparing that increased admission receipt with the preceding year, when bank night was not played, how much difference was there between the two years?

Mr. Adcock: If your Honor please, that is an as-
1668 sumption that I do not think is correct, when bank night was not played. The evidence is that it was played part of the time in the preceding year.

Mr. McConnell: Well, let me ask the question a little different:

Q. Did you make any comparison between the period immediately preceding the period in which bank night played and the period in which bank night did not play?

A. Well, I haven't got those figures here, no, sir.

Q. You can not tell that from what you have before you?

A. No, but I know there was an increase when bank night started.

Q. Well, now, was all the increase assigned to those particular nights upon which bank night was played?

A. I believe you could say it is substantial, a very major part of it was.

Q. Well, would you say all of it, or just a major portion of it?

A. Well, that is difficult.

Q. You can not tell without your figures?

A. No, I wouldn't be able to tell without figures.

Q. And those figures do not show it?

1669 A. No, sir.

Q. You say you have some other figures that do?

A. We have them. They can be pulled together.

Q. But you are not prepared, not ready to—

A. No, sir.

Mr. McConnell: All right. That is all.

1670 *Redirect Examination by Mr. O'Brien.*

Q. Mr. Barron, you were requested to tell us what the figures were as shown by the records, the figures which we asked you for, is that correct?

A. That is right.

Q. And that is all you had to do with it?

A. That is right.

Q. Did we ask you to draw any conclusions as to what these figures were intended to show?

A. No, sir.

Mr. O'Brien: That is all. Just stay there, Mr. Barron. Let me ask you:

Q. Did you take the same days in the weeks of 1937 as you used during the week or weeks of 1936?

A. The same week days?

Q. Yes.

A. The same days of the week?

Q. Yes.

A. That is right.

Q. That was, Wednesday and Friday, in 1936, was bank night?

A. If bank night was played on Wednesdays and Fridays of 1936, and those were the same two days of the week that I took in 1937.

1671 Q. So if you said on cross-examination that you took Wednesday and Thursday in the year 1937, you were wrong, is that correct?

A. I meant Wednesday and Friday.

Mr. O'Brien: All right. That is all.

(Witness excused.)

1672 CHASE W. LOVE, called as a witness on behalf of the defendants, Loew's RKO, Fox, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Seeley.

Q. What is your name, sir?

A. Chase W. Love.

Q. Where do you live?

A. 1804 Sherman Avenue, Evanston, Illinois.

Q. With what firm are you associated?

A. Sanderson & Porter.

Q. What is their business?

A. They are engineers.

Q. Did I employ you to make certain investigations of the playing positions of certain Chicago theatres from 1916 to 1926, as reflected in the advertisement in old newspapers?

A. You did.

Q. And pursuant to that employment did you cause some one in your employ to make the tabulation from the old newspaper files from the amusement ads?

A. Yes.

Q. Who was the person who did the work?

A. Mrs. Katherine B. Allen of Chicago.

Mr. Seeley: Mr. McConnell has agreed with me
1673 that if Mrs. Allen were called she would testify that she did the copying correctly, to the best of her ability.

Will you mark this as a bulk Exhibit, Loew's, RKO, Fox Exhibit A, please?

(Thereupon said documents were marked Loew's RKO, Fox bulk Exhibit A.)

Mr. Seeley: I will ask that some time when court is not in session the reporters will mark the separate sheets in that bulk Exhibit from A-1, A-2, on as far as they go.

1674 Mr. Seeley: Q. I will show you, Mr. Love, the first sheet, which would be A-1 of this Exhibit, and ask

you to tell the jury for what theatres you made this study, what theatres are covered by it?

A. The theatres covered in this study were the Jackson Park, Tivoli, Avalon, Tower, Woodlawn, Jeffery, Grove, Shore, South Shore, Hamilton, Lexington and Kimbark.

Q. Now, all of those theatres were not in existence throughout this entire period, were they?

A. That is true. I merely gave the names in the order that we have them. Some of them do not appear until later in the study.

Q. And on the left hand column, two columns of each sheet, appear the names of certain pictures, and the date. What is that date in the left hand column opposite the picture?

A. The date in the left hand column is the release date.

Q. Where did you obtain the release date?

A. That was taken from the Film Daily Year Book, and other sources that show the release dates.

Q. Then in the columns under the names of the various theatres there appear dates. Are those the dates
1675 upon which the pictures were advertised as appearing in those theatres?

A. Yes. We covered the date on which the picture opened at that theatre.

Mr. Seeley: Yes.

The Witness: (Continuing) —and the date at which it closed, entering both in the column opposite the picture and under the name of the theatre.

Q. On a few of these sheets there are also prices marked, such as 15 cents, something of that sort. Does that indicate the advertised admission price in connection with these performances?

A. Yes, it does. It was to be the evening adult admission price where the price was shown in the advertisement.

Q. In most cases it was not shown?

A. It was not shown in most cases.

Q. Do these studies cover the entire year of every year from 1916 to 1926, or just a test period each year?

A. No, it is just a test period, but it is a period that runs from the first of September until the 31st of December, the last four months of each year.

Q. I see. Now, after this tabulation was com-
1676 pleted, did you, at my request, prepare certain summaries from it?

A. Yes.

Mr. Seeley: I will ask that this be marked Loew's RKO-Fox Exhibit B, and that these be marked in the same way, C, D, E, and F.

(Thereupon said documents were marked Loew's RKO-Fox Exhibits B, C, D, E and F.)

Mr. Seeley: Q. Mr. Love, I will show you the Exhibit which has just been marked B, and ask you if that is one of the tabulations which you prepared?

A. It is.

Q. What does it purport to show?

A. Well, this is an analysis of the motion pictures exhibited at the Jackson Park Theatre as compiled from daily newspaper advertisements during a test check period, namely, the last four months of each year, 1916 to 1926, inclusive, excepting the year 1920 in which there were so few advertisements that the year was omitted. Under each of those years, with that exception, we showed first, under "A" the number of pictures played at the Jackson Park; then "B" the number of pictures played
clear by Jackson Park, that is, not played by others
1677 or ahead of others.

Q. Now, at that point when you say "others" you are referring only to the theatres covered by Exhibit A?

A. That is correct.

Q. It does not relate to theatres all over the city?

A. No. In that neighborhood.

Q. "C", number of pictures on which the Jackson Park had a split first run with one or more others?

"D", number of pictures played by Jackson Park in Section run—

Q. Second run?

A. Second run, I am sorry.

"E", the number of pictures played by Jackson Park in third run; and "F", the number of pictures played by Jackson Park in fourth or later run.

Q. And the whole Exhibit refers only to the theatres covered by Exhibit "A". You did not attempt to go outside those theatres?

A. No, only those.

Q. What does Exhibit "C" purport to show?

A. Exhibit "C" is a comparison of pictures played at the Jackson Park and Woodlawn Theatres, as compiled

from daily newspaper advertisements in the test check period.

1678 Column "1" shows that that was the last four months of 1918 to 1926, inclusive, excepting the year 1920, in which there were no advertisements reported.

Column "2" shows the identical pictures played by each theatre.

Column "3" shows those played first by Jackson Park.

Column "4" shows those played first by Woodlawn; and

Column "5", played at the same starting day and date by each Theatre.

Q. And are Exhibits D, E, and F similar to C, except that they refer, respectively, to the Tivoli, the Jeffery, and the Hamilton Theatres as compared to the Jackson Park?

A. Yes.

Q. And some of them do not cover the same period of time because the theatres were not in existence?

A. That is correct. The advertisements did not appear on all of them for the whole period.

Mr. Seeley: I will offer in evidence Loew's-RKO-Fox Exhibits A, B, C, D, E and F.

The Court: Any objection?

1679 Mr. McConnell: No objection.

The Court: They may be admitted.

(And thereupon said documents so offered were received in evidence as Loew's-RKO-Fox EXHIBITS A to F, both inclusive, and are used in words and figures as follows, to-wit:)

1680 Mr. Seeley: Cross-examine. I am through with the witness.

Cross-Examination by Mr. McConnell.

Q. Mr. Love, did you make any attempt at all to grade the pictures as to quality?

A. No.

Q. I don't remember you said, whether you said you had covered every picture that was shown during that period of time in those Theatres.

A. Well, we covered only what the advertisements showed. I made no attempt to take every picture, whether advertised or not. Our work was confined to the published advertisements.

Q. Just what you found in the old issues of the newspapers?

A. That is right.

Q. And the Exhibits show some play dates where it does not show what played in any theatre?

A. Well, there would be some gaps, but they are fairly consistent records.

Mr. McConnell: I think that is all.

Mr. Seeley: That is all.

(Witness excused.)

1681 HOWARD BECK, called as a witness on behalf of Loew's Inc., having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Seeley.

Q. What is your name?

A. Howard Beck.

Q. Where do you live?

A. Glen Ellyn, Illinois.

Q. By whom are you employed?

A. Loew's Incorporated.

Q. How long have you been employed by Loew's?

A. Past seven years.

Q. In what capacity?

A. Salesman.

Q. How long have you been a salesman for Loew's in Chicago?

A. Four years.

Q. During that time have you sold for Loew's on the south side of Chicago?

A. Yes, for the period.

Q. And at any time after you became a salesman in Chicago, and prior to July, 1942, did you negotiate sales or licenses of films with the Jackson Park Theatre for loew's?

A. Yes, I did.

Q. In what seasons, and at what time did you

1682 negotiate?

A. As I recall, in the month of December, 1941, for the season's product, which we called '41 and '42.

Q. Who did you negotiate with?

A. Mr. Salkin.

Q. Was there anyone else present with him that you recall?

A. No, sir.

Q. And were you successful in closing the deal with him?

A. Yes, sir.

Q. Were there any percentage pictures included in that deal?

A. Yes, there were.

Q. In the course of your negotiations with Mr. Sakin, was anything said on the subject of moving the Jackson Park up to some run earlier than first week of general release?

A. No, sir.

Q. Who was the Loew's salesman who preceded you?

A. Mr. Julian King.

Q. Is he with your Company now?

A. No, sir, he is not.

Q. Is he working or living in Chicago, that you know of?

A. No, sir.

1683 Q. And before Mr. King, who was the salesman?

A. Mr. Mendelsson.

Q. Teddy Mendelsson?

A. That is right.

Q. He is in the Army, sin't he?

A. Correct.

Mr. Seeley: You may cross-examine.

1684 *Cross-Examination by Mr. McConnell.*

Q. You did not sell any product prior to December, 1941, if I understand your testimony correctly?

A. I think that is right.

Q. And that was the 1941-42 product?

A. Correct.

Mr. Seeley: You will have to keep your voice up, Mr. Beck, because the reporters can not see your expressions; they have to hear you.

Mr. McConnell: Q. Were you present when Mr. Salkin testified?

A. I was in the court room one,—last Friday was the only other day. No, Mr. Salkin was not on the stand that day.

Mr. McConnell: I do not recall whether Mr. Salkin testified to a conversation with Mr. Beck.

Mr. Seeley: Well, I can not say for sure, but it was on the assumption that he did, that I brought Mr. Beck here. I would have to look it up to be sure.

Mr. McConnell: There is no cross-examination of this man. I don't think he did.

(Witness excused.)

1685 The Court: Call your next witness.

ALLEN USHER, a witness called on behalf of the defendant Paramount Pictures, Inc., having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Adcock.

Q. Will you state your full name?

A. Allen Usher.

Q. Residence?

A. Paw Paw, Michigan.

Q. You testified at the instance of Mr. McConnell some time before this trial started, in a deposition, did you not?

A. Yes, sir.

Q. You don't know whether your deposition was read here or not?

A. No, I don't.

Q. Part of it? I think we can agree that it was, can we not?

Mr. McConnell: Oh, yes.

Mr. Adcock: Q. What is your present employment?

A. I am a District Manager for Paramount Pictures, supervise the territories served by Chicago, Mil-
1686 waukee and Minneapolis offices of Paramount.

Q. And how long have you been District Manager?

A. About seven years.

Q. It was, then, prior to that time, you were Branch Manager, were you?

A. I was Branch Manager here in Chicago for about five years prior to that time.

Q. 1931?

A. Or the early part of 1932, I believe.

Q. Then who followed you as Branch Manager?

A. James Donohue.

Q. Who has testified here, is that your understanding?
A. Yes.
Q. Did you ever have any conversation with Mr. Salkin? You know Mr. Leo Salkin?
A. Yes.
Q. Or Mr. Richard Salkin, do you not?
A. Yes.
Q. Did you ever have any conversation with him, or with Mr. Mager, or anyone else representing the Jackson Park Theatre, in which Mr. Salkin or anyone else in behalf of Jackson Park asked for a better or an earlier playing position than Jackson Park was occupying, in the first week of general release?
1687 A. No, sir, at no time did they ask me for a better position.
Q. Did any of your salesmen, or anyone in the employ of Paramount, under your direction, over whom you had direction, report to you that any such request had ever been made?
A. It was never brought to my attention.
Q. And that is true, that covers the period from the time you became Branch Manager up to the present time?
A. That is right.
Q. Or up to the time this lawsuit was instituted, July 28th, 1942?
A. Yes, sir.
Q. Was there, to your knowledge, any agreement or understanding or common plan or design, with respect to the establishment or the maintenance or continuation of any release system for the exhibition of motion pictures in Chicago, between Paramount and any other distributor or exhibitor?
A. No, sir.
Q. Was there any contract, understanding, or common plan or design, to your knowledge, between Paramount and any other defendant, or anyone else, with
1688 respect to refusing to license Jackson Park in any week earlier than first week of general release, except as may have been provided in contracts made in the regular course of business, with reference to licensing of certain pictures?
A. No, sir.
Q. I will ask you the same question as to conspiracy

or agreement or understanding as to the fixing of minimum admission prices?

A. None whatever, sir.

Q. Has the there ever been any understanding or agreement, to your knowledge, with respect to—between Defendants, between Paramount and any defendant?

A. No, sir.

Q. With respect to the introducing of double feature policy in the city of Chicago, in 1936?

A. No, sir.

Q. Or with reference to Balaban & Katz introducing double feature policy in their theatres except as to any agreement that may have been made in the regular course of business for product by Balaban & Katz?

A. None that I can recall.

Mr. Adcock: I think that is all.

1689 *Cross-Examination by Mr. McConnell.*

Q. Mr. Usher, I have already cross examined you at some length in a prior deposition, is that right?

A. That is right.

Q. Do you remember selling a picture in C week to the Jackson Park?

A. I did not sell it. It was sold by our company, yes.

Q. Well, you signed the contract, didn't you?

A. I imagine I approved the contract. That is the approval signature.

Q. I show you Plaintiffs' Exhibit 15 and ask you to examine that document and state if that is your signature?

A. Yes, it is.

Q. I don't suppose you have your deposition in mind that you gave, on which I examined you?

A. In mind?

Q. Yes.

A. To some extent.

Q. Did you read it over?

A. I read it over last week.

Mr. McConnell: I think I will waive any further cross-examination—not waive, but no further cross.

Mr. Adcock: Just a minute, please.

1690 *Redirect Examination by Mr. Adcock.*

Q. The picture to which counsel has referred was "Reap The Wild Wind", was it not?

A. Yes.

Q. Do you know what the minimum admission price provided for by the contract was for adults?

A. During that run it was 55 cents minimum for adults, evenings.

Q. That was a special picture released by Paramount?

A. It was handled specially.

Q. Do you know whether all theatres were required to charge that admission price on that run?

A. Under that plan when that was released, during the time they played it 55 cents was the minimum evening adult admission generally.

Mr. Adcock: That is all.

(Witness excused).

1691 Mr. Adcock: If your Honor please, Mr. Neil Agnew is in New York,—whom I expected to have here. He was called is a juror on February 7th and is still on that jury case in the Court of General Sessions in New York, and I have taken that matter up with Mr. McConnell and he has agreed to sign a stipulation which I propose to read to the jury.

Mr. McConnell: All right.

Mr. Adcock: (Reading stipulation:)

"It is hereby stipulated by Thomas C. McConnell, attorney for the plaintiffs herein, that if Neil Agnew were present at the trial of said cause—"

the cause is *Bigelow* v. *RKO*, above.

"of said cause and were sworn as a witness to testify in said cause on behalf of the defendants Paramount Pictures Inc. and Balaban & Katz Corporation, he would testify in substance as stated below, and that this stipulation may be offered in evidence on behalf of the said defendants Paramount Pictures Inc. and Balaban & Katz Corporation at the trial of said cause:—

"1. The said Agnew resides at 320 Park Avenue,
1692 New York City, New York, and his office is at 1501 Broadway, New York City.

"The said Agnew is now vice-president in charge of sales for the United States and Canada of the defendant Paramount Pictures Inc., herein called for convenience

Paramount. He was employed by said Paramount or its predecessors on January 3, 1920 at Chicago, Illinois, as a booker in the Chicago Exchange of said Paramount, and until 1925 he worked in various capacities in the Chicago Exchange territory as salesman and assistant sales manager, when he became branch manager of the Chicago Exchange except for the period from February 19, 1923 to October 15, 1923, when he was branch manager of the Milwaukee Exchange.

"As branch manager his duties were to supervise the operation of all phases connected with the conduct of the business of the branch, including sales, which is the negotiation of contract obligations, supervise the salesman,
1693 supervise the booking and accounting departments, contract departments and shipping and inspection departments. He was branch manager until the year 1930, when he became district manager with headquarters at Chicago. He had supervision over Chicago, Detroit, Indianapolis and Milwaukee Exchanges.

"On November 7, 1932 he was transferred to the Home Office at New York, at 1501 Broadway, in the capacity of western division manager. As western division manager his principal duties were to supervise and have charge of sales for the western division which covered all territory west of Detroit at that time. He remained in that capacity until 1935 when he became general sales manager and later vice-president in charge of sales, which position he now holds.

"2. There has never been to Agnew's knowledge any agreement, conspiracy, understanding, negotiation or communication between any one of the defendants and any other defendant to maintain in the city of Chicago
1694 and its environs, a system of releasing motion picture film for exhibition in theatres owned, leased or operated by any of the defendants or by their subsidiaries or affiliates, or any theatres owned, leased or operated by any other firm, person or corporation.

3. There has never been to Agnew's knowledge any agreement, conspiracy, understanding, negotiation or communication between any one of the defendants and any other defendant whereby in the releasing of motion picture films for exhibition in the city of Chicago and its environs, theatres owned, leased or operated by any of the defendants or by their subsidiaries or affiliates are given

or were to be given preference and priority or prior runs and clearance in the exhibition of motion pictures over independent or other theatres, excepting agreement, understanding, negotiation or communication had or made between Paramount and the operator of any motion picture theatre in the ordinary course of business of making
1695 and entering into license agreements for exhibition of its pictures in said theatre.

"4. There has never been to Agnew's knowledge any agreement, conspiracy, understanding, negotiation or communication between any one of the defendants and any other defendant to introduce double features in theatres owned or operated by any of the defendants.

"5. There has never been to Agnew's knowledge any agreement, conspiracy, understanding, negotiation or communication between any one of the distributor defendants and any other distributor defendant relative to the manner in which any one of them or more of them or all of them should deal with the plaintiffs' theatre or any other theatres or refrain from so dealing or as to the run to be licensed to any of such theatres or the clearance to be granted with respect to any of such theatres.

"6. There has never been to Agnew's knowledge
1696 any agreement, conspiracy, understanding, negotiation or communication between any defendant distributor and any defendant exhibitor or any other exhibitor relative to the manner in which any one or more of them or all of them should deal with the Jackson Park Theatre or refrain from so doing or as to the run to be licensed to Jackson Park Theatre or the clearance to be granted over it other than such run or clearance provisions as may be contained in the individual license agreement between Paramount Pictures Inc. and the Jackson Park Theatre and the exhibitor defendants or any other exhibitors for the exhibition of Paramount pictures.

"7. If in fact there had ever been any such agreement, conspiracy, understanding, negotiation or communication of the character above mentioned to which Paramount was a party, it would have come to Agnew's attention in the performance of his duties."

1697 I will ask that that be marked Paramount Exhibit 15.

(Said document was marked Paramount Exhibit 15, and is in words and figures as follows:)

1698 Mr. McConnell: You had a couple of exhibits which I objected to and on which I now waive my objection.

Mr. Adcock: Yes.

Mr. McConnell: Do you want to read those in?

Mr. Adcock: Yes. Exhibits 11 and 12.

I offer in evidence B. & K. Paramount Exhibit 11, which has been so marked for identification, and I ask that it be received in evidence. I understand there is no objection.

The Court: It may be received.

(Said document, so received in evidence was marked B. & K. PARAMOUNT EXHIBIT 11, and is in words and figures as follows:)

1699 Mr. Adcock: This exhibit I will read. It is headed Tower Theatre, address 1520 East 63rd Street, Chicago, Illinois. Then, on the left, there is a column for "year" and on the right another column, "gross admission" and to the right of that there is another column "film rental," and I will read the columns together, first the year, then the gross admission, and the film rental.

For the year 1933, gross admission, $170,330.00; film rental $56,659.63.

For the year 1934, gross admission, $190,676.15; film rental $53,408.68.

For the year 1935, gross admission, $197,549.77; film rental $51,570.42.

For the year 1936, gross admission, $258,482.33; film rental $57,015.77.

For the year 1937, gross admission, $206,910.30; film rental $66,431.70.

For the year 1938, gross admission, $205,556.84; film rental $60,919.43

For the year 1939, gross admission, $239,850.30; film rental $69,586.21.

1700 For the year 1940, gross admission, $208,363.19; film rental $76,362.81.

For the year 1941, gross admission, $206,799.63; film rental $68,619.38.

For the year 1942, gross admission, $230,787.58; film rental $51,328.45.

This I also offer in evidence, which has been marked for identification B. & K. Paramount Exhibit 12. Any objection?

Mr. McConnell: No.

Mr. Adcock: That exhibit is a mere graph showing the curve of the gross admissions and the film rental.

(Said document, so received in evidence, was marked B. & K. PARAMOUNT EXHIBIT 12, and is as follows:)

1701 Mr. McConnell: Do you want to put this in, to make your picture complete?

Mr. Adcock: I thought you wanted to offer that.

Mr. McConnell: All right. I will wait until my case, then.

Mr. Adcock: I also offer in evidence, which I think was intended to be offered by Mr. McConnell, as Exhibit 156-A, but I have it here and offer this document in evidence, which is entitled "List of Theatres appearing on Plaintiffs' theatre map, showing seating capacity and playing position of each theatre." That is that big map that sat out here first, the first time the jury saw it when Mr. McConnell was making his opening statement. I offer that in evidence, to be used in connection with that map, as Paramount Exhibit 18.

Mr. McConnell: I think, if the Court please, I offered it subject to my being able to check when the map question came up.

The Court: And now it is agreeable to both sides that it go in, is that right?

Mr. McConnell: Yes.

Mr. Adcock: Yes.

1702 It will be easier if it went in because the map is marked Exhibit 156, as Exhibit 156-A.

The Court: Yes. This goes in as Exhibit 156-A, explanation of the map.

Mr. Adcock: That is right, Plaintiffs' Exhibit 156-A.

(Said document, so received in evidence, was marked PLAINTIFFS' EXHIBIT 156-A, and is in words and figures as follows:)

1703 Mr. Adcock: I think that is all, your Honor.

The Court: Any more witnesses?

Mr. O'Brien: I have a witness, your Honor.

The Court: All right, sir. Produce him.

ARTHUR C. PATZLAFF, called as a witness on behalf of Vitagraph Inc., having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. O'Brien.

Q. What is your full name, sir?
A. Arthur C. Patzlaff.
Q. And you are associated with Vitagraph, Inc.?
A. That is right.
Q. In what capacity at the present time?
A. At the present time, office manager.
Q. And for how long have you been with that company?
A. I started with First National in 1924 and continued right through.
The Court: Talk a little louder, please.
Mr. O'Brien: Q. First National came in about 1930?
A. 1931, I believe.
Q. And is it part of your duties to keep the records and documents of the company, to see that they are 1704 properly filed and preserved?
A. That is right.
Q. And amongst those are there salesmen's reports?
A. Yes, sir.
Q. Will you tell the jury briefly what those are, who they are made by and to?
A. The salesman's reports is a form that the salesman must give to the branch manager showing what activities he did during the day.
Q. Is he supposed to make a report covering every visit which he makes to an account relating to the sale of product?
A. He should.
Q. Did you know Sidney Rose?
A. Yes.
Q. Did you work under him at Vitagraph?
A. I did.
Q. Was that true during the seasons 1936-37, 1937-38, and 1938-39?
A. I believe he was a salesman at that time.
Q. Yes. Well, in that case you did not work under him, but under the Branch Manager?
A. That is right.

Q. Last Thursday did I ask you to obtain and
1705 to see that there was delivered to me any salesmen's reports made by Mr. Rose during and for those three seasons which I have mentioned?

A. 1936-37, 1937-38, and 1938-39?

Q. Yes.

A. That is right.

Q. And did you make a search for those?

A. I did.

Q. How was Mr. Rose about keeping up his reports, if you know?

Mr. McConnell: Oh, I object to that, characterizing how the witness—

The Court: I did not hear the question.

Mr. O'Brien: Read the question.

(Question read).

Mr. O'Brien: I mean did he—

The Court: What system did he follow or what did he do?

Mr. O'Brien: No,—was he faithful in making up and turning in his reports.

Mr. McConnell: He is calling for the characterization by the witness of the conduct of some employes, whether he is a good employee, whether he did it right.

1706 Mr. O'Brien: No, I don't mean that. I don't care what he did about it, but did he write it.

The Court: He may answer.

The Witness: He was consistent in making out his reports.

Mr. O'Brien: Q. And on Friday morning did you deliver—well, first, let me ask you, what did you find? Did you find Rose's reports?

A. I found Mr. Rose's file pretty—well, it was complete.

Q. Is Mr. Rose presently with Vitagraph?

A. No.

Q. He has not been there for how long?

A. About two, two and a half years, I believe.

Q. Now, did you cause those reports to be delivered to me?

A. That is right.

Q. When they were delivered did they consist of single sheets or were they grouped in some fashion?

A. They were grouped by weeks.

Q. And the number of sheets which he made out for any given week, in any of those three years, were clipped together, were they not?

A. That is right.

1707 Q. Now, we have separated from those groups the sheets purporting to relate to the Jackson Park, of which seven have been put in evidence as Warner's Exhibit 4 to 10. Will you look at those and tell me if they are part of the records which you sent to me?

(Witness examines documents).

A. They are.

Q. And there were other sheets relating to the Jackson Park and also purporting to have been made by Mr. Rose which were not offered in evidence. Will you look at those and tell us if those too are part of the reports which you sent to me?

(Witness examines documents).

A. They are.

Q. Have you delivered to me all of the sheets which you found, all of Rose's reports?

A. All of them.

Q. Did you omit any of them that you were able to find?

A. No, sir.

Mr. O'Brien: I don't want to testify, your Honor, but I want to vouch for the fact that I brought into Court

1708 all of the documents which the witness gave me.

The Court: I think Mr. McConnell will concede that.

Mr. McConnell: No question about that. I certainly don't want to have any such inference in the record.

Mr. O'Brien. Q. Now, do you know Mr. Mandell?

The Witness: A. I do.

Q. Do you know his signature?

A. Yes.

Q. Will you look at those documents such as purport to be signed by him and tell me if they are his signature?

(Witness examines documents).

A. They are all his, except, of course, the type-written ones.

Q. Did you produce all of those from your files at my request?

A. Yes.

Q. You brought these in this morning?

A. That is right.

Mr. O'Brien: There was some questioning as to the dates of Mr. Mandell's visits and as to what transpired during his discussions, and I offer these relatively
1709 few sheets in evidence for that reason.

Mr. McConnell: No objection.

The Court: They may be admitted.

(Said documents, so received in evidence, were marked WARNER EXHIBITS 19, 20, 21, 22, 23, 24, 25 and 26, respectively, and are in words and figures as follows:)

1710 Mr. O'Brien: Q. Did I ask you to bring in this morning any sales reports which you could find of Ted Mendelsson and Harry Goldman?

A. You did.

Q. They too were salesmen?

A. Yes.

Q. And where are they now, those men?

A. Ted Mendelsson I believe is in the army. Who was the other salesman?

Mr. O'Brien: Goldman.

The Witness: Goldman is in the army.

Mr. O'Brien: Q. I show you two sales reports of Mr. Mendelsson covering the years in question and three reports from Mr. Goldman, and ask you to state if those are the reports which you produced, and all of them?

A. These are the reports.

Mr. O'Brien: I offer those in evidence.

Mr. McConnell: There is no objection.

The Court: They may be admitted also.

(Said documents, so received in evidence, were marked WARNER EXHIBITS 27, 28, 29, 30 and 31, respectively, and are in words and figures as follows:)

1711 Mr. O'Brien: That is all.

(Witness excused).

The Court: I think this will be a good time to take our recess until two o'clock.

(The jurors here left the jury box).

Mr. Seeley: Your Honor, I just wanted to suggest this: Don't you think that, for the protection of all the parties, —Mrs. Wittleder and everyone else—you might instruct her not to discuss what happened in the jury room, while this case is going on? I see she is still here. Not to discuss it with anyone, Mr. McConnell or anyone else?

The Court: Not to discuss it with whom?

Mr. Seeley: With anyone—Mr. McConnell or anyone else.

The Court: All right. Mrs. Wittleder.

Mrs. Wittleder: Yes?

The Court: Step here, please.

(Mrs. Wittleder stepped forward).

I just want to suggest to you that of course you will not speak to anyone in the jury room.

Mrs. Wittleder: No.

1712 The Court: Or anyone, about this case.

Mrs. Wittleder: No. Mrs. McCarthy told me. She said I may be allowed to listen.

The Court: Sure. There is no limitation on your movements at all. You can stay as long as you want, but just don't converse with the jurors or anyone else as to what transpired in the jury room.

Mrs. Wittleder: No, I haven't.

(The further hearing of the above entitled case was thereupon recessed to two o'clock p. m., of the same day, March 6, 1944.

1713 IN THE DISTRICT COURT OF THE UNITED STATES

For the Northern District of Illinois

Eastern Division.

Florence B. Bigelow, *et al.*,
vs.
RKO Radio Pictures, Inc., *et al.*

Before Igoe, J., and J.,
Monday, March 6, 1944,
2:00 o'clock p. m.

Court met pursuant to recess.

Present:

Mr. McConnell,
Mr. Korfist,
Mr. Adcock,
Mr. Goldberg,
Mr. Seeley,
Mr. O'Brien.

1714 The Court: All right. Proceed.

Mr. Seeley: Mr. Nolan, will you take the stand and be sworn?

RAYMOND NOLAN, called on behalf of the defendant RKO Radio Pictures, Inc., having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Seeley.

Q. What is your name?
A. Raymond Nolan.
Q. Where do you live, Mr. Nolan?
A. St. Louis.
Q. By whom are you employed?
A. RKO Radio Pictures, Incorporated.
Q. How long have you been in the employ of that company?

A. Twenty-five years.
Q. What position do you hold now in St. Louis?
A. Prairie District Manager.
Q. Had you been with that company in Chicago?
A. Yes. I was with the company twice in Chicago.
Q. When was the last time?
A. From 1932 to 1939.

1715 Q. During any part of that period, were you a salesman covering the South Side?
A. Yes.
Q. What part of the period was that?
A. Five years.
Q. Which five?
A. From 1934 to 1939.
Q. Did you make film deals with the Jackson Park Theatre during that period?
A. Yes, sir.
Q. With whom did you deal?
A. With Mr. Salkin.
Q. Did Mr. Mager sometimes sit in?
A. In the last two years, I believe.
Q. At any time in the course of your negotiations with Mr. Salkin or with Mr. Mager, did either of them say anything to you about playing a run for the Jackson Park Theatre earlier than first week of general release?
A. No.
Mr. Seeley: You may cross-examine.
Mr. McConnell: No cross.
Mr. Seeley: That is all. Thank you.
(Witness excused.)

1716 JAMES E. COSTON, called as a witness on behalf of the defendants Vitagraph, Inc., and Warner Bros. Circuit Management Corporation, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. O'Brien.

Q. What is your name?
A. James E. Coston.
Q. Where do you live, Mr. Coston?
A. 4950 Chicago Beach Drive.
Q. Is that on the South Side of Chicago?

A. Yes, sir, 50th and the Lake.
Q. How long have you lived there?
A. Approximately five years.
Q. And prior to that, where did you live?
A. 56th and Everett, 5555 Everett Avenue.
Q. You also have lived on Merrill Avenue?
A. Yes, about ten years, possibly longer, 6719 Merrill Avenue.
Q. That is in the vicinity of the Jeffery Theatre and the Jackson Park Theatre?
A. Yes, sir.
Q. You gave your deposition in this case, did you not?
1717 A. I did, sir.
Q. And part of that or most of it was read into evidence before the jury?
A. I do not know whether it was read into evidence or not. I was not here.
Q. With whom are you associated now?
A. Warner Bros. Circuit Management Corporation.
Q. That is one of the defendants in this case?
A. Yes, sir.
Q. How long have you been with that company?
A. Since 1930, in September.
Q. In what capacity?
A. Zone manager.
Q. Is that the company which operates the theatres owned by Warner Bros. in Chicago?
A. Correct.
Q. And those are the theatres which are named and listed in Warner Bros. Exhibit 12, are they not?
A. Yes, sir.
Q. When did Warner Bros. acquire those theatres, approximately, if you remember?
A. In the summer of 1930. They started in May, possibly to November or December, 1930, a period of four or five months, maybe six.
Q. Are there any of the theatres in Warner's
1718 Exhibit 12, which were acquired at a later date?
A. There were two theatres which were built and leased to Warner's at a later date.
Q. What are they?
A. The Beverly Theatre was built and leased to

Warner's in June, 1935; and the Rhodes Theatre in 1937 was leased to Warner Bros., and was opened for business in 1937.

Q. Where is the Beverly Theatre located?

A. 95th and Ashland, the southeast corner.

Q. And the Rhodes Theatre?

A. 79th and Rhodes Avenue.

Q. Are you an officer of Warner Bros. Circuit Management Corporation?

A. No, sir.

Q. What are your duties as zone manager?

A. My duties as zone manager,—in reality, I am general manager of the theatre department in the zone which I cover.

Q. Does Warner's have any theatres in the Loop?

A. Pardon me?

Q. Does Warner's have any theatres in the Loop?

A. No, sir.

Q. You are a little hard of hearing in one ear, are you not, Mr. Coston?

1719 A. My cold has affected it a little bit.

Q. Which ear is it?

A. Both sometimes; this one (indicating).

Q. Do Warner's have any theatres on the North or West Sides of Chicago?

A. They have one theatre on the Northwest Side, on Chicago Avenue near Kedzie.

Q. The Symphony Theatre?

A. Correct, the Symphony Theatre.

Q. You were telling us about your duties as zone manager. Tell us what they are, what things you cover in a general way.

A. Well, as head of the theatre department, I have charge of all the theatres and policies of the theatres, the regulation policies, admission prices of the theatres, participate in the negotiating and buying of pictures, bookings, I have charge of real estate, finances, and all employees. I am general manager, the head of the theatre department.

Q. Where is your office?

A. 1307 South Wabash Avenue.

Q. Is Vitagraph in the same building?

A. Yes. It is the Warner Building, they call it.

Q. Do you remember when that building was built?

A. Sometime in 1931, I believe.

1720 Q. Who are some of the employees under you? That is, their positions? Briefly sketch those for the jury.

A. My office in Chicago consists of myself, my assistant, Mr. Ryan. His duties are directed to the theatres; Mr. Barron, you might call the bookkeeper and office manager in charge of the office employees, and records, and assists me in any additional matters.

I have two district managers who supervise the theatres. I have an exploitation man who helps out at the theatres.

We have a personnel man in charge of all the personnel, and we have a buyer, a booker who buys and negotiates the pictures directly with the various film companies. All in all, we have about fifty employees, what I call the local office here in Chic[illegible].

Q. I suppos[illegible] yo[illegible] have stenographers, filing clerks and comptometer operators?

A. Yes, possibly about fifty in all.

Q. All right. At the theatres themselves, as distinguished from the office, will you give us an idea of what the different jobs are there, how many men are employed?

1721 A. Each theatre has its own employer. He stays in the theatre with the staff. Some theatres have more employees than others, depending on the size of the theatre.

The staff consists of the manager of the theatre, and they have an assistant manager. Larger theatres sometimes have two assistants. They have cashiers, they have operators, stagehands, electricians, engineers, and we have janitors, cleaning women or cleaning people, ushers, chief of staff.

In some theatres where we have parking lots free for the patrons, we have parking attendants. That briefly is the staff of each individual theatre house.

Q. Do you have employees known as district managers?

A. I have.

Q. What is their function, their duty?

A. The district manager's duties are to supervise certain theatres. To illustrate, we have sixteen theatres in the city of Chicago, and we have two district managers. Each district manager supervises eight theatres.

His duties are to visit the theatres to see that they

are kept properly clean, in good order; and to assist
1722 the manager and properly operate the theatre, report to the office, to me, rather, directly in my meetings, of various performances or problems of various things that might result in the operation of the theatre.

That is the function of the district manager.

Q. And I suppose the managers have meetings from time to time?

A. We used to have weekly meetings with all managers and assistants in my office. We have a projection room, a little theatre in which we screen a picture before we book it to the theatre. We used to use that for the weekly meeting, but since the gas rationing, we do not use it so often, about once a month; but we do have meetings with the district managers.

Q. State briefly the purpose of the meetings.

A. At the meetings we discuss,—first, rather, we have an analysis of the bookings. We usually book pictures to a theatre three or four weeks in advance. Some of the pictures possibly play in the larger theatres before they open in the smaller theatres. We check the largest of
1723 the larger theatres to see how the public has received the pictures, whether they were good, and sometimes we think it is a good picture and the public will not accept it. They do not like it.

We discuss that, and often change the picture, take it out and sometimes we eliminate it entirely or change it for something better, to better the plan, the program.

We also discuss various matters. In the last two years, we spent most of the time discussing war activities, such as Red Cross, Community Fund, this March of Dimes. We have to make collections and advertise them in the theatre, in brief, that is what our meetings consist of. We discuss every product we have, as to the booking and operation of the theatres. We discuss that with the district manager and the staff. There are about five or six men there.

Q. Going back to theatre employees, where do you obtain them? What training do they have and how do you select them?

A. The system I inaugurated years ago, and the company has adopted, we usually employ young boys of the age of sixteen years or older, and start them as
1724 apprentice ushers. After they have spent three months, in which time the manager instructs them

in their duties and observes carefully whether the boy is really adapted to our work and does the work properly, we promote him, elevate him. Our system is to promote our employees to the highest position in the theatre. All of my employees either started with the company or myself as an usher. In the whole district management, the same exploitation is used down the line.

Q. Tell us briefly what training the usher received,—or have you covered that?

A. The training is just, first we teach the boys to be courteous to the public and not incur the displeasure of the public. Then we teach him how to understand the schedules we have. We have programs; for instance, the News Reel starts at 1:45 and the picture at 2:00 o'clock, and so down the line. Then we start the employee with various equipment, the aisles of the theatres, construction of the theatre, in order to be able to answer questions from the public and handle the public properly. That is the first instruction that the manager gives them.

After that employee has been with us six months or a year, he takes them down in the office, to assist the
1725 manager. He calls them in and instructs them in how, after selling a picture, to feel the pulse of the public, to get the reactions of the public as to what the people want and what they do not want.

Sometimes it takes three years before the boy has reached the point of special knowledge to promote him to assistant manager or chief of staff.

Q. You mentioned exploitation men. What is their work?

A. The exploitation man's duties is this; after the picture is screened off and is booked to a theatre here in Chicago, the exploitation man visits various theatres and analyzes the possibility of the picture.

Here in Chicago, all of our theatres that are neighborhood houses, outlying theatres, cater to each separate little community. There will be a picture which has a certain appeal to a certain community. It is his duty to go over with the manager and suggest ways how to properly exploit that picture and get the most out of the picture in the neighborhood.

In some cases we have book reviews of the theatres,
1726 such as the Beverly and the Jeffery, too. If the story which the picture is made from happens to be a story which was reviewed in the theatre; we have a mail-

ing list of various pictures, and the exploit man writes a letter to a number of people in the neighbrhood, or a postal card, calling their attention to the book being reviewed in our theatre, that it now has been made into a picture, and a very fine picture. He tells them that the picture will be played and gives the date and so forth.

That is part of the duty of the exploitation man.

Q. Speaking of the neighborhood or community, what, if any contact have your men had with the Parent-Teachers Association?

A. Our theatres, as I stated earlier, are located in separate neighborhoods, and naturally they have within a radius of a few blocks, a number of schools, and likewise various Women's Clubs. Our managers get in contact with the various associations and work with them, and our exploitation man contacts the schools whenever we have a picture which is of particular interest to the school and to the children.

1727 Q. Do you recall any such picture as that?

A. Oh, we had a number of pictures; recently, "This Is The Army", and a few years ago, "A Midsummer Night's Dream," taken from Shakespeare. That particular picture has not particularly appealed to the general public, and yet, it has a definite appeal to the schools.

We work with the schools and sometimes give benefits for the schools, in order to raise funds for certain Parent-Teachers Associations. We give them tickets.

Q. How do you mean, "raise funds"?

A. To raise funds, in most cases they approach us to give a benefit for the purpose of raising funds not only applied to Parent-Teachers Associations, but to churches and various schools, as well as Women's Clubs.

As I mentioned before, this particular picture, "A Midsummer Night's Dream," in conjunction with the picture, we gave opportunity to the schools to make some money. Therefore, we gave them during the run for two or three days,—at the Beverly, possibly three or four days, and the Avalon a full week,—we gave them as many
1728 tickets as they could sell, which they sell outside either through the school or through the members of the Parent-Teachers Association, to their friends, at the regular admission price, whatever the theatre charges. Out of the total amount of money, we let them retain 40 per cent.

In this way we create good will with the public and with the school, and exploit the picture to better advantage to everybody. That is the purpose of the exploit man.

As to the other benefits, we do have benefits and every theatre has benefits. We, of course, have them in most of our larger theatres in the South Side. We have given more benefits possibly than some of the other theatres. The Avalon has three or four a year. The Jeffery has about six a year. In some cases where it is an eductional play, we give benefits like to the Longwood Academy, Longwood High School or Mount Carmel, in order to give them opportunity to raise more funds. We give them the entire theatre and close, instead of twelve on Saturday night, we close at 9:30; and at the midnight show, we supply the entertainment and give them the picture.

1729 Q. Do the exploitation men make any use of the radio, Mr. Costan?

A. Yes. We have what is called sub-announcing, varying about two minutes or three minutes in the station at Gary, WIND, I believe.

Q. A little louder, please, Mr. Coston.

A. We have what is called sub-announcing, varying about two minutes or three minutes in the local station at Gary, WIND, I believe, telling the public what pictures are playing in our theatres on the South Side.

Q. By that, you tell the public what the program is, what is going to be at the various houses?

A. Yes, sir.

Q. What telephone or information do you furnish?

A. We have a switchboard. Our theatres are connected to the Capitol Theatre, where a patron can find this one number, Triangle 1500, and receive any information pertaining to the schedule, the time of the show, and if people have to wait before they can get into the theatre and anything they wish to know.

Q. And I suppose you have some newspaper advertising?

A. Newspaper advertising?

Q. Yes.

1730 A. Yes, we have in all the papers.

Q. Well, before you exploit a picture or at the time, do you generally make some arrangement to license it?

A. Of course, we have to negotiate a contract with the distributor.

Q. Now, have you any man who assists in or who helps to handle those negotiations?

A. I have a man who not only assists, but is the man who negotiates that with all the film companies.

Q. Who is he?

A. Alex Halperin.

Q. Does he work under your supervision in buying pictures?

A. He works under me, yes.

Q. Well now, tell us how it is that you go about the negotiation for pictures. Do you have any discussions with Mr. Halperin, and what happens from there on?

A. In the earlier years, well, I will say for to six or seven years ago when my duties were not as many as they are today, I used to sit in all negotiations in contracting for pictures for our theatres. In those days, of course, we
1731 were buying pictures for the entire year. It is different from day to day. You only buy five pictures at a time from each company.

Now, Mr. Halperin negotiates with the various distributors, and he requests, he reports to me the discussions with the distributors, as to the distributors. If they do not agree in prices and the distributor wants more money, he asks my approval to pay more money for the picture, or to buy a certain picture and not buy other pictures. In other words, he discusses it with me.

Q. Before he starts negotiations, do you have any discussion about terms or prices or any understanding about what is to be done?

A. We usually look at the pictures and write them down. We have screened the picture in our office way before we negotiate for the picture. We arrive then at what we feel would be a fair price to pay for the rental of that picture in each particular theatre.

Q. All right. Now, if the prices are within the range which you have discussed with Mr. Halperin, does he go on to conclude the deal without any further discussion about it?

1732 A. Yes. He has the authority to proceed and close the deal.

Q. Suppose there is some change with occurs.

A. Even with a change, he has authority to proceed and use his judgment. I have confidence in him. He can pay more or rent it at a flat rental. If I am in the city, he

substitutes for me. If I am out of the city, he has authority to go ahead.

Q. In buying pictures for your houses which have been licensed in C week, do you always buy at flat rentals, or is there sometimes participation?

A. Not always. Some pictures are so-called straight per cent. Each company varies, and some pictures from other companies might have a flat rental and participation. Then the film company participates in excess of that amount of money. Some are straight percentage from the first dollar.

Q. Now, in the discussions having to do with the terms for a picture, do you take up the matter of clearance?

A. Well, clearance in all our theatres, the clearance was in effect before Warner Bros. had bought the theatres, and some clearances have been in existence since 1930.

1733 Therefore, there is no occasion to discuss clearance with the distributor. If there is, the time we do talk clearance is the time when the contract is negotiated for the rental of the picture to the theatre.

Q. Am I to understand by that, that if the distributor has suggested a change, or if you have suggested a change, there is some discussion about it, but otherwise, it goes according to the preceding year?

A. Correct.

Q. How do you deal with the distributors in licensing pictures? Individually, collectively, or how is that handled?

A. No, sir. Individually,—each distributor when he has a picture to sell, calls on Mr. Halperin, calls on my office.

Q. Are the prices which you pay for the pictures the same in case of the various distributors?

A. The prices are not the same. They vary. The prices and terms vary for each distributor.

Q. On the South Side, you have the Avalon and the Capitol Theatres, do you not?

A. I do, I have.

Q. Is there some of the product which you ordi-

1734 narily have licensed to run first on the South Side in those houses?

A. Well, I have first run on the south side of the Warner product, pictures produced and distributed by Warner's. I also have pictures produced and distributed by RKO, first run on the South Side.

Q. Is that product enough to take care of the requirements of those houses?

A. No, sir.

Q. Where do you license the remaining product which is necessary?

A. I repeat pictures, buy pictures from other companies, which play first run in the Tivoli.

Q. By "repeat", what do you mean?

A. I repeat them to follow the Tivoli Theatre. The Tivoli plays them first, and the Avalon repeats after the Tivoli. The Avalon plays them in the same week as the Balaban & Katz theatre known as the Southtown Theatre.

Q. I see. I forgot to ask you, Mr. Coston, in dealing with any given distributor, do you buy the pictures for the season or the year for all of the theatres at one time, or do you deal separately for each theatre, or how is it done?

A. No. It varies. Sometimes I buy pictures for
1735 all the group of theatres, if it is the type we want.

Sometimes I buy them for twelve, sometimes I buy them for fourteen, and sometimes I buy for six or eight. It depends on the picture.

Q. When the negotiations are concluded and before the agreement is expired, is it submitted to you for approval, with the exceptions which you have mentioned?

A. Unless it is a somewhat radical change from what is customary. The buyer has his records showing what the picture paid years prior to that, what the trend of business is; and if the distributor wants a considerable increase for the picture, he consults with me, he advises me of the change. If the pictures are in the same classification and the same rentals as the previous year, it is not necessary to consult with me about it.

Q. At the present time, where is your Jeffery Theatre playing pictures in relation to the Jackson Park and to your Hamilton Theatre?

A. The Jeffery Theatre plays in so-called city release C week, a week earlier than Jackson Park.

Q. And the Hamilton?

A. The Hamilton plays pictures a week later, or
1736 after the Jackson Park.

Q. Are you familiar with the location and structure of all three theatres?

A. Very well, sir.

Q. Do you have any opinion as to the relative merits of the three houses?

A. Comparing as to location,—
Q. Just, do you have an opinion?
A. I have an opinion.
Q. What is it?
A. My opinion is that the Jeffery is a newer theatre, has finer appointments and is a larger theatre, has more seating capacity, I believe, by 350 more seats than the Jackson Park Theatre. It has a full stage, has finer appointments, such as the lobby, more comfortable seats; in brief, it is newer and more modern and has a better location than the Jackson Park Theatre.

Likewise, the Jackson Park Theatre is much better than the Hamilton, I believe. That is my opinion, sir.

Q. Did you ever tell Mr. Salkin or any one else that the Jackson Park Theatre, in your opinion, was entitled to play in C week?

A. No, I did not say that, sir.

1737 Q. Do you recall any conversation which had to do with that subject?

A. Oh, sometime in 1940, I don't exactly remember the date, Mr. Salkin was in my office, telling me that his boss, as he said, Mr. Bloom, was complaining about business in the theatre and was blaming Mr. Salkin for allowing the Hamilton to play in the same week with the Jackson Park, and we were discussing various conditions at the time. During the discussion, he suggested: "Why don't I move the Jeffery Theatre to B week?" I said, "I would like to move the Jeffery Theatre to B week." Then he said: "And you can move Jackson Park Theatre to C week to replace the Jeffery." I said, "I have no objection to the Jackson Park moving to C week as long as the Jeffery, which is close to the Jackson Park, can play the pictures earlier, in an earlier week."

Q. Is that all the conversation you had which had to do with that subject?

A. That was the only conversation and the only time we ever discussed the matter.

Q. Do you recall Bank Night and other games?

A. Oh, yes, very well.

1738 Q. And that obtained at your theatres as well as others?

A. Yes, sir.

Q. When was it, if you recall, that you started Bank Night at the various houses? I mean the Avalon, the Grove, the Shore, the Jeffery, and the Hamilton Theatres?

A. We started Bank Night in those theatres sometime in 1935. I don't know whether it was early in the spring. I don't remember the month, but I do know that it was in the year 1935; and we ran Bank Night all the way through until the last week in December of 1936.

Q. And they were run continuously, were they, over that period?

A. Yes. In the theatres, in the beginning, we had them one day, and later on, we had two days; in each theatre, I mean.

Q. What was the occasions for your going into Bank Night?

A. Well, the other theatres had it, and conditions in those days following 1932, '33 and '34, which in my memory were rather disastrous things in our business in the theatres, we went to Bank Night, the biggest stimulant the
1739 theatres had ever had. They really created a lot of interest in the theatre and a lot of business in the theatre. That is the reason we went to Bank Night.

Q. Were your theatres making or losing money before that year?

A. They were losing money, sir.

Q. What happened when you went to Bank Night, let us say, with the Jeffery Theatre.

A. The biggest year we had since we had the Jeffery Theatre in my memory, since we operated the theatre, was the year 1936, when we had Bank Night.

Q. Tell us approximately what the gross receipts were during that year.

A. Well, talking in a calendar year rather than a fiscal year, because our year starts from September; taking from January 1, 1936 to December, the last of the year or January 1, 1937, the theatre grossed approximately $220,000. That is the total gross receipts.

The same period the following year, which is from January 1, 1938, the theatre's receipts went down to close to one hundred and seventy, approximately, $170,000. In other words, a definite drop or loss in that theatre's receipts
1740 of over $52,000.

Q. Was there any change which occurred in your admission prices at the Jeffery Theatre in February of 1937?

A. In 1937, early in 1937, when we adopted double featuring, sometime, yes. We increased the admission price from 30 to 35 cents less the tax, if taxes were at that time, to compensate us for the additional expense to go into double features.

Q. Is it true that the admission prices for September and October months in the year 1937, were therefor higher than what they had been in the year 1936?

A. Yes, they were higher.

Q. Notwithstanding that, you say there was this drop in revenue?

A. Yes. The drop would have been much greater, were it not for the fact that we increased it a nickel in 1937. In other words, comparing the total gross receipts under the admission price of 1937, with what we had in 1936, the drop would have been greater than $52,000.

Q. Warner's Exhibit 18 which was offered in evidence yesterday, and which shows the figures which you
1741 have just mentioned, was prepared at your direction, was it not?

A. Yes, under my direction, and at your request and Mr. Levinson's.

Q. Do you have any opinion as to what part of that drop of $52,000 was due to the loss of Bank Night?

A. In my opinion, the biggest part is attributable to Bank Night, if not before.

Q. What do you base that opinion on?

A. Well, the night we were comparing these figures and knew from experience, in order to be accurate on a comparison, we took two days that had Bank Night, Wednesday and Friday in the Jeffery Theatre, we tabulated the actual receipts of those two days for the entire year.

We likewise took Wednesday and Friday of the following year, the total receipts of the following year; aid if I remember, and I think I am right, the difference was $80,000. I know that gross of $80,000 for the Wednesdays and Fridays of 1936; and for 1937, without Bank Night, that gross was $40,000, which is definitely a $40,000 loss, due to Bank Night, in my opinion.

Q. To what, if anything else, do you attribute the
1742 loss in revenues which occurred in the year 1937?

A. Well, it is a combination of things, admission price, but most, however, the loss of Bank Night definitely; but economic conditions were such at the time that all our theatres were affected. I know the period very well, from 1937 to 1938.

Q. What economic conditions do you have in mind?

A. Unemployment at that time.

Q. Would that make any difference in the attendance to the theatres?

A. It definitely does make a difference.

Q. How long did those adverse economic conditions obtain, would you say?

A. In Chicago?

Q. As to the theatre business.

A. In my theatre business,—I am only judging from my own theatres and my experience which I have from other theatres which I have under supervision and which I have contacted. Our business took a big drop with the closing of Bank Night, and continued to go down in 1937. 1938 was still less than 1937 in receipts, and it went practically down up to the point in 1940 when it started to improve.

We did not, however, have a big improvement until 1743 1941.

Q. When in 1941?

A. I would say after the war started, after the activities started, the last two and a half or three years.

Q. Take your other theatres on the South Side there in the same general neighborhood, such as the Avalon, the Grove, and the Shore. What happened there as to receipts when Bank Night was instituted? Were the results the same or different than at the Jeffery Theatre?

A. The results were identically the same; more possibly, but a smaller percent. Some theatres with a larger capacity, their business improved more than the other theatres; but if you make a chart out of the receipts for the various years, you will find the results practically the same. With Bank Night, they were up, and then down. You can see the receipts going up and then going down in 1937, continuing down to 1938 and 1939, and then going up again.

Q. Now, when did the Hamilton Theatre inaugurate Bank Night?

A. Bank Night in the Hamilton Theatre was not more than four or five weeks before we stopped. We had Bank Night in the Hamilton first, then we started Bank
1744 Night in the Jeffery Theatre. We abandoned Bank Night for the Hamilton Theatre, oh, toward the last, but Bank Night was discontinued, say about November of 1936.

We did adopt Bank Night in the Hamilton Theatre for a period of possibly three or four, maybe five weeks, a very short period before Bank Night was discontinued in all the theatres.

Q. Well, now, the Hamilton Theatre is the house which plays in second week?

A. Yes, sir.

Q. And has lower admission prices than both the Jackson Park and the Jeffery?

A. No. I believe the Hamilton Theatre is charging the same admission prices now as the Jackson Park.

Q. Was that true in 1937?

A. Yes. I believe in 1937, when we adopted double features, we increased the admission price to 30 cents. I do not know what the Jackson Park Theatre was charging at that time. I know that we were charging 30 cents at the Hamilton.

Q. Was there a resumption of the double featuring in 1936?

A. Yes.

Q. When did you first notice it in that year?

1745 A. Well, during the year 1936, there was some, a number of so-called smaller theatres independents, smaller houses which were called independents, playing double features; but in November or October, about the first or second week of 1936, the Balaban & Katz Theatres on the South Side adopted the policy of double features, the Tivoli, the Southtown, the Tower, and the Maryland, operated by Balaban & Katz.

Q. Did Balaban & Katz consult you or anybody in Warner Bros. Circuit Management Corporation about that?

A. Certainly not.

Q. When did you learn of it?

A. Oh, I heard it from some distributor who called it to my attention, that he said possibly a week or two before

the Tivoli started its policy, that the Tivoli had booked two big pictures to be played as double features.

I observed then from the ads in the papers, to see what they were playing. The week following, I saw that the Tivoli had two big pictures there for double features. I don't recall the name of them.

Q. What did you do about it? Did you give any
1746 thought about what you were going to do?

A. The district manager called a meeting with all of my managers. I told him personally that I was opposed to double features—

Mr. McConnell: I object to any conversation.

The Court: Objection sustained.

Mr. O'Brien: Q. What did you do?

A. I did not adopt the policy of double features right away. I thought best at first to give it careful consideration.

Q. Let me ask you, when did you first put any of your theatres into double features, either on full time or part time basis?

A. The Avalon and the Capitol started double feature programs the last week in December, the 26th of December, 1936.

Q. And when did your houses generally, for the most part, go into double featuring?

A. Most of my theatres then followed through with double features in the so-called C houses in the smaller theatres.

Q. When?

A. Some the last part of January, 1936; at varying dates, some the 24th, some the 31st, some in February, and so forth. The dates would vary.

1747 Mr. McConnell: He means 1937, doesn't he?

The Witness: A. 1937. I beg your pardon.

Mr. O'Brien: Q. Now, from October to December, were the Avalon and the Capitol playing, and had they been playing repeat on the Tivoli in single feature programs, pictures which had played at the Tivoli with another picture?

A. Yes. We played some pictures repeat after the Tivoli Theatre, as a single feature program; some of which pictures had previously played the Tivoli, double featuring with another picture.

Q. Now, let's take this period from October to January,

and go back to the question as to what you and your organization did to try to determine whether you would adopt a double featuring policy, or retain the single feature policy. What did you do?

A. We did a lot of things. We gave it a lot of thought and gave it a lot of consideration. I asked my manager to observe, to see if the Tivoli and the Southtown had improved their business. I asked him to carefully check the patronage to see if the people are asking for double features. I asked the cashiers to give me reports as to the people who were buying tickets, to write down any remarks they might make, such as: "Are you having only a single feature show?" Or, "Why don't you have two features, the same as the other theatres?" In some theatres we went so far as to have our employees ask the people whether they preferred double or single features. We noticed for a period of eight to ten weeks there from October to December, our business started to take a decided drop in our two large theatres, the Capitol and the Avalon. Therefore, we decided to move cautiously and adopt only double features in the larger houses that were charging higher admission prices. Following that, we did the same thing in the C houses, and in the case of the Jeffery Theatre, we went even so far as to run a trailer on the screen, and had mimeograph ballots, asking the people what they preferred.

Q. Was this the Jeffery Theatre?

A. It was the Grove, the Highland, and the Ogden Theatres,—I don't know—and the Beverly; in some cases, the Beverly Theatre.

Q. All right. You say you had ballots?

1749 A. Yes, mimeograph sheets.

Q. Have you made a search to find any of those?

A. Yes, I tried hard.

Q. Have you been able to find one?

A. No, sir.

Q. What was it you wanted to know on these ballots?

A. We wanted to know what the public wanted. We were interested in knowing what the people wanted so as to gauge the contact for our theatres.

Q. Well, let's take the Beverly.

A. The Beverly was decidedly for single featuring. In fact, the people, not a one with the exception of possibly some young child or children, not a one ever asked for double features. We opened with a single feature, and are today continuing single featuring.

Q. You never ran any double features in the Beverly?
A. No. We never ran double features in the Beverly Theatre.
Q. I think you told us that the Rhodes opened late in 1937?
A. Possibly a year before double featuring had started on the South Side.
Q. What policy did you open that under?
1750 A. We adopted the single featuring policy and continued until June.
Q. How did business go under that?
A. Business was not good. Business was bad.
Q. Did you continue with the single feature policy or did you change it?
A. No. I changed it after five or six months after the opening of the theatre, adopted double featuring.
Q. At the time of running single features at the Rhodes Theatre from November of 1937 until six months afterwards, were other competing theatres running double features?
A. Yes, sir.
Q. When you changed to double features at the Rhodes Theatre, what happened to the revenue?
A. The business did not improve.
Q. Did not affect it any?
A. No, because general business at that time in 1938 was still on a downward trend, rather than upward. Business did not improve.
Q. Coming to the Jeffery Theatre along toward the middle of January, 1937, what had you found there from your check up with the patrons at that house?
1751 A. The manager wanted single features. Therefore, at the Jeffery, we thought—
Q. You say the manager wanted what? I didn't understand.
A. Sorry. The manager reported to me in a meeting that he had certain employees who gathered from the patrons of the theatre, according to his report to me, the statement that the majority would still like to have one good picture to double features in the Jeffery Theatre.
Q. Why? Do you know?
A. Because the people thought they wanted a single feature better than a double feature, providing they could give them a good feature. He suggested, however, to adopt a so-called mixed policy, the policy of having one picture

Sunday, Monday, Tuesday, and Wednesday, a single feature, securing the best picture available for the week for those four days. And for Thursday, Friday, and Saturday, the last three days of the same week, adopt double featuring, taking two of the so-called secondary pictures and putting them together and using those as a double feature.

Q. By the way, you mentioned a trailer which you ran at the Jeffery Theatre. What is a trailer?

1752 A. A trailer asking the public, I don't know exactly—

Q. What is a trailer?

A. A trailer is an announcement which we have on the screen between the two pictures, telling about the coming attraction. That particular trailer or announcement just called the attention of the public, asking them: "Will you please express an opinion whether you would like to have the double feature policy in our theatre", or something to that effect.

Q. All right. You testified that sometime in January you instituted a mixed policy at the Jeffery Theatre?

A. Yes, sir.

Q. Did you do that?

A. Yes. I continued that policy until April, the middle of April the same year, 1937.

Q. Then what did you do? Let me ask you first, how was business at the time you instituted that policy, that mixed policy in the middle of January?

A. It improved somewhat.

Q. How was business before you instituted that policy?

1753 A. The business was affected, business started going down. With the double feature policy, it improved somewhat, but as a whole, business was not much. It improved as a day with double featuring, but not as a week.

The manager then suggested adopting single features, and give it a good trial for a long period, to discontinue the single feature for the first part of the week and double features the last part of the week. We started that April 15th, until August of the same year, for a period of about five months there. The last week in August, we did adopt the policy of straight single featuring, making three changes a week, or the same policy which we had in the Beverly Theatre.

Q. How was business during that period of five and one-half months?

A. There was no improvement whatsoever. In fact, we lost a lot of patronage those months.

Q. During that time, was the Jackson Park Theatre playing single or double features?

A. My recollection is, from the information which I gathered, Jackson Park played double features at that time from April to August. They played double features.

1754 Q. Do you remember when the Jackson Park started to double feature?

A. No, I do not.

Mr. O'Brien: Well, that is in the record.

Q. All right. What did you do at the Jeffery at the end of August, 1937?

A. I adopted the double feature policy, the same as the other theatres.

Q. And have you been running double features steadily since, at the Jeffery?

A. Yes, with the exception of some pictures due to the length which requires a lot of time to exhibit and those pictures we do have—we exhibit them as a single feature.

Q. Before you started running double features at any of the houses, can you tell us, just roughly, the number of changes which you were making at the Avalon, the Shore, the Grove, the Jeffery, and the Hamilton? Never mind the Hamilton. Give me the others.

A. In the Avalon and Capitol we had two changes a week; occasionally we had a full week. In the Jeffery we had three changes a week, prior to double featuring three changes. In the Shore, three, and sometimes four, mostly four. In the Hamilton, five changes a week, with

1755 single picture. In the Grove, three changes a week.

Mr. O'Brien. Will you mark these with the next numbers?

(Documents marked Warner Exhibits 32 and 33, for identification.)

Mr. O'Brien: Q. After you instituted a full double feature policy at the Avalon and the Jeffery, how many changes a week have there been?

A. The Avalon has one change of program, plays pictures a full week.

Q. And the Jeffery?

A. Two changes a week.

Q. So that at the Avalon you now use, and have since

full double features used, two pictures a week, and at the Jeffery four pictures a week?

A. Correct.

Q. Did you have prepared a compilation showing the difference in the number of pictures played under the single feature policy and the number played under the full double feature policy?

A. Yes.

Q. I show you Warner's Exhibits 32 and 33 for identification, one relating to the Avalon and one to the Jef-
1756 fery, and ask you to state if those are those compilations?

A. Yes, those compilations were made in my office under my direction, from my film buying department, booking department.

Q. And can you tell us how many pictures were used at the Avalon in the season 1935-36; I mean the picture season, and how many were used during 1936-37, and the 1937-38 seasons?

A. The Avalon Theatre played 77 pictures for the year 1935-36, or from September 1st, 1935, to September 1st, 1936, and in the 1936-37 played 88 pictures. In double picture policy 1937-38, played 99 pictures.

The Jeffery Theatre, for the same period, of 1935-36 played 163 pictures; 1936-37 played 170 pictures, and in 1937-38, 198 pictures.

Mr. O'Brien: Q. I forgot the Shore Theatre. That went to double features along in January, 1937, some time, didn't it?

A. Pardon?

Q. The Shore Theatre went to double features?

A. The Shore Theatre about the same period, about the same period.

Q. At and prior to the time that it did that, which
1757 was its nearest competing theatre? What was the nearest competing theatre to the Shore?

A. The Shore Theatre? The nearest competing theatre is the Ray Theatre, about a block.

Q. What were they doing at the time the Shore went to double features?

A. They were double, sometimes they were triple.

Q. Who owns the Ray Theatre?

A. Gallas Brothers.

Q. I take it, from what you have said, it took some more

products than you had been using to carry out the double feature policy at your houses?

A. Yes.

Q. Did you have that additional product under contract in the 1936-37 season or was it necessary to arrange terms for it with each different distributor?

A. Yes, we had additional product under contract, because in our contracts for the Jeffery Theatre it was selective contracts, in other words we had the privilege of eliminating a certain number of pictures from the contract. To illustrate, my point is this, the company, say Para-
1758 mount Pictures made 52 pictures for the year 1937-38 and entered a contract for the Jeffery Theatre for '36 to be selected out of the 52, giving the right to the Jeffery Theatre to eliminate 16 pictures. We had a call on 16 pictures if we wanted them. Therefore we could use part of the company, part of the other companies to make up.

Q. And the price was already stipulated in the contract?

A. Yes, the price was already stipulated in the contract.

Q. Now, just one more question, Mr. Coston. Do you know the plaintiffs in the case here?

A. Well, I had the pleasure of meeting Mrs. Bigelow here in the court room, and her brother I met once before, but I know Mr. Salkin very well and I know Mr. Edward Bloom very well.

Q. How long have you known Mr. Bloom?

A. Well, I would say since the Jackson Park was opened.

Q. And you met Miss Bloom, I take it, when she was very small.

A. Well, I remember the family many years ago, but I never met Mrs. Bigelow until here in the court.

1759 Q. You did not know her when she was a young girl, very young?

A. Well, I had met the family a good many years ago.

Q. And your relations with Mr. Bloom have been what, cordial or otherwise?

A. Pardon me?

Q. Cordial or otherwise?

A. Cordial. Very cordial.

Q. Now, Mr. Coston, do you know—do you have any knowledge of any conspiracy Warner Bros. Circuit Man

agement Corporation is engaged in to put independent theatres or the Jackson Park Theatre out of business, or in any way adversely to affect the theatres?

A. No, sir, I do not know of any conspiracy.

Mr. O'Brien: You may cross examine.

The Court: Suppose we take a recess for ten minutes.

(A recess was accordingly taken, after which the following further proceedings were had:)

1760 *Cross-Examination by Mr. McConnell*

Mr. McConnell: Q. You built the Beverly Theatre, didn't you?

A. You mean personally?

Q. Well, did you have anything to do with the building of the Beverly Theatre?

A. Yes, sir, my family owns the building and built the building.

Q. When was that theatre built?

A. In 1935.

Q. There is no business district around the Beverly Theatre, is there?

A. No, not what you call a business district.

Q. Did you pick out the location for that theatre before it was built?

A. Yes, sir.

Q. What is the nearest business district to the theatre?

A. Well, the business district there on 95th Street, to the Rock Island Railroad tracks and Beverly.

Q. What is the nature of the community around the Beverly Theatre?

A. I don't understand your question.

Q. What is the character of the neighborhood?

1761 A. Very nice neighborhood, very fine.

Q. Residential?

A. Yes.

Q. Are there apartment houses there?

A. Apartment houses north of the Beverly, north there are a few apartment houses on the south of the theatre, but mostly residences.

Q. How large a theatre is the Beverly?

A. 1500—oh, I beg pardon, 1350.

Q. What week of release did it play?

A. 6 week.

Q. What admission price does it charge?

A. Now it is charging 40 cents.

Q. Now, how long have you been in the film industry here in the city of Chicago or its environs?

A. I have been in the theatre business, not the film industry.

Q. Well, theatre business?

A. About thirty-two or thirty-three years, approximately.

Q. And you are familiar with the growth and development of the business, I assume?

A. I am, yes, sir.

Q. You are familiar with the classification of theatres into successive runs, are you not?

1762 A. I am.

Q. And each run having a minimum admission price in the run, do you know about that?

A. I do.

Q. What are the different admission prices?

Mr. O'Brien: I think, your Honor, I will object to his going over that. I don't recall any direct examination on that subject.

Mr. McConnell: He asked him a question about his knowledge about the business.

The Court: I thought you asked him a question about whether or not he was familiar with any alleged conspiracy that had to do with the operation of those theatres around here. Doesn't that pretty near cover this whole field?

Mr. O'Brien: I did not ask him that. I asked him whether he had any knowledge of any conspiracy on the part of Warner Bros. Circuit Management Corporation.

The Court: Yes. The objection is overruled. He may answer the question.

Mr. McConnell: Read the question to the witness, please.

(Question read as follows: "What are the differ-
1763 ent admission prices?"

The Witness: You refer undoubtedly to the outlying houses?

Mr. McConnell: No, I am referring to start with the Loop.

The Witness: Well, the Loop—

Mr. McConnell: The minimum admission prices.

The Witness: I don't know what the minimum admis-

sion prices are in the Loop. I do know they charge 75 cents or more in the Loop.

Mr. McConnell: Q. That is, their minimum is 75 cents. You know what the minimum admission is?

A. I do not know. In some cases it may be 80 cents. I think some theatres charge more than 75 cents. It is 75 cents, they were; now it is higher. You know at different periods the admission prices vary.

Mr. McConnell: I am talking about the minimum admission price.

The Witness: Well, the minimum admission price is 75 cents.

Mr. McConnell: Q. What is the minimum admission in B week?

A. Forty cents.

1764 Q. And in A?

A. Fifty cents.

Q. And in C week?

A. Thirty to thirty-five cents.

Q. Now, prior to the consent decree,—you know when that decree came in, the consent decree?

A. 1940, '41, I believe.

Q. Yes. Prior to that time did you have anything to do with negotiations of pictures for your theatres in your chain?

A. Sometimes I did, sometimes I did not.

Q. Well, did you sit in on any deals?

A. Yes, sometimes I did sit in on deals.

Q. And when you sat in on deals you negotiated what you might call clearance for all of your chain of theatres, did you not, with the distributor which you were dealing with?

A. Yes, the clearances had already been in the theatres and had never been changed. In fact, we never did discuss clearance at the time in the past six or seven years with a distributor.

Q. All right. I did not ask you what you discussed. Now, let us get a base together of agreement. Your clearance runs from contract to contract, does it not?

A. Correct.

1765 Q. That is, it runs from the beginning of the contract to the end of the contract?

A. To the end of the contract.

Q. And the expires by the terms of that contract unless a new one is negotiated, is that correct?

A. Correct.

Q. Now, these clearance agreements,—you understand what a clearance agreement is?

A. I do.

Q. Sure. Those clearance contracts were negotiated with the distributors, were they not?

A. With the distributor.

Q. And when you negotiated with the distributor you agreed, either before or at the time you bought your pictures, on your clearance, and incorporated that in an agreement, didn't you?

A. Correct.

Q. Now, I will show you a document which has been marked Plaintiffs' Exhibit 120 and call your attention to the schedule of release. Now, in that schedule of release, and part and parcel of of, was a schedule of minimum admission prices, were there not?

A. Yes, it is.

Q. And that is part of your agreement with your 1766 distributor?

A. Correct.

Mr. O'Brien: What is the exhibit number?

Mr. McConnell: 56.

Q. Now you did not buy any pictures, you might negotiate for pictures, but your buying of your pictures for your theatres—and I am talking now about the time prior to the consent decree—your buying of your pictures was all woven into that clearance agreement, was it not?

A. Well, we took it for granted that this clearance, which was really,—each theatre has its own clearance and when we negotiate a contract we negotiate on the basis of this clearance unless the occasion arose to change the clearance. Nobody ever requested a change.

Mr. McConnell: Well, I didn't ask whether you requested a change. I am asking you how you did it. You put it in a contract before you got product, didn't you?

A. No, we didn't put it in the contract. First we negotiated for the pictures for, say, 1936-37, we enter into negotiations, we arrive at certain terms; unless there is some change in this clearance—we don't even call this, you know, even talk about it. After the negotiations are 1767 completed—

Q. All right. You don't talk about it.

A. No, unless there is some changes.

Q. But you do make a new clearance agreement for the coming year?

A. Well, it automatically is renewed—the same clearance, the same availability.

Q. It is not automatically renewed, is it?

A. Well, it is, for the simple reason unless there is some other change—

Q. It is a new agreement, isn't it?

A. It is a new agreement as to the terms of the picture.

Q. Signed at that time?

A. As to the terms of the picture, but not as to the run.

Q. But as to the clearance, I am talking about a new physical document which is executed in each play season.

A. Yes. After the contract is consummated, the matter is agreed upon, we prepared—rather, it is prepared by the distributor—the clearance which you just handed me.

1768 Q. You wouldn't be protected from any distributor, would you, unless you had this agreement or understanding as to the clearance of your theatres?

A. You are correct in that, sir.

Q. Now, your agreement as to clearance were the same with all distributors, were they not?

A. Well, practically yes, with all the distributors.

Q. And they carry the same minimum admission prices for the showing of the product?

A. Not all distributors, some distributors carry the same minimum admission price, some do not.

Q. Well, are you familiar with all the A theatres?

A. In the city of Chicago or the South Side?

Q. In the city of Chicago. You know them all, don't you?

A. Well, I practically know them all, yes, sure.

Q. And you know what their minimum admission price is in the A run, don't you?

A. It is 50 cents.

Q. Now, you know that the picture that has the prior run has the best box office appeal, do you not?

A. Yes, it has the best box office—sometimes now that varies, of course, according to the theatre and the location.

1769 Q. Well, isn't that generally so?

A. In some cases, not in every case.

Q. You would not think if was true?

A. Not in every case. Not in every case.

Q. Well, would you pay as much for a picture if it had been run by three of your competitors as you would before it was run by your competitors?

A. Depends on the ability of the theatre. The Beverly Theatre pays more for pictures repeated after other theatres than theatres that play pictures before the Beverly.

Q. I am asking you now would you pay as much. You are buying the picture—

A. Yes, sir.

Q. Let us leave the theatre aside for the moment.

A. All right.

Q. You are buying a picture. Would you pay as much for that picture after it had been run by three of your competitors as you would if you got it clear?

A. It depends again on the theatres. If the theatres are close I would not pay as much, of course not.

Q. You referred in your deposition to a little dif-
1770 ferent term for clearance; you called it "protection."

A. We used to call it protection in the years before 1939.

Q. You changed it to "clearance"?

A. We sometimes used to say, "protection," that the theatre cannot play fourteen days after the termination of the run of the previous theatre. Later on the various distributors changed that to say we give you clearance in the theatre. Clearance means lapse of time between the availability of the picture to your theatre after the previous run. So that is clearance.

Q. Is it the same thing—protection and clearance.

A. Well, it varies somewhat, because some theatres still do have protection, some other locations, some other towns, they call it protection. Some theatres have sixty days clearance or protection, they call it, sixty days protection to protect their theatre from any other exhibit of the pictures playing in that particular theatre. They have sixty days where the picture cannot be shown until sixty days after termination of the run of a certain theatre.

Q. You think protection is something different
1771 than clearance?

A. Well, in reality it is the same thing, Mr. McConnell.

Mr. O'Connell: That is what I am trying to get at.

The Witness: But it varies as to the time.

Mr. McConnell: Q. Now, what was your purpose in buying clearance over the other theatres?

A. So I can have opportunity to exhibit pictures in my theatres to the best advantage.

Q. And that is without having the picture exhibited in any other theatre prior?

A. Within close proximity of those who would compete with me.

Q. You know all the representatives of the distributors here in town, do you not?

A. I know most of the different ones, and some of the managers, yes.

Q. You know them very well?

A. Some of them I know very well.

Q. You meet with them socially?

A. Sometimes have lunch.

Q. Play golf with them?

A. Play golf?

Q. Yes.

A. Not many film people play golf, no.

1772 Well, you are friendly with them, you know them and talk to them?

A. Oh, sure, I know them very well, sir.

Q. There isn't any secret about this business, is there? Don't you pretty well understand the business generally?

A. Not many secrets in the picture business.

Q. No. Everybody else knows everybody else's business, don't they?

A. It seems that way.

Q. Sure.

A. It seems that way.

Q. Now, Mr. Coston, I think you are a little different here in your testimony than you were in your deposition. I don't want to contradict you at all, I just want to see if we can straighten you out on something.

A. All right, sir.

Q. You testified here, if I recall your testimony correctly, that you talked with Mr. Salkin and he said Mr. Bloom was complaining and critical because you had moved up in the same playing position, although it was not the same day, it was the same week. Do you recall that?

1773 A. Correct.

Q. Now, in your deposition—I don't want to put these questions in the way of impeaching questions, because I am not going to impeach you as a witness—I just want to see if we cannot get together on it. As I understand your testimony there, you asked Mr. Salkin if it would be all right with him if you moved your theatre up?

A. I did not ask Mr. Salkin that I move up the theatre.

Q. You did not?

A. No.

Q. I will ask you if, on this question, I will ask you if I did not ask you this question in your deposition,—

A. Yes, sir.

Q. (Reading from deposition:)

"Do you recall a conversation that you had with Mr. Richard Salkin, a year and a half or so ago, along about May, 1942, with reference to the playing position of the Jackson Park Theatre?"

And did you answer?

"Oh, I asked Mr. Salkin three years ago if pos-

1774 sible to allow the Hamilton Theatre to play the pictures in the same week but after the Jackson Park Theatre ran:"

do you recall that answer?

The Witness: Now that you read my testimony there, possibly it is right,—but it is wrong. I did not ask, Mr. Halperin asked Mr. Salkin to move the Hamilton Theatre and the Jackson Park Theatre, and I stand corrected if that is the testimony as you read it, Mr. McConnell.

Q. But this is the way you testified on your deposition?

A. Possibly—it must be.

Q. And you were under oath there?

A. Possibly, I appreciate that, but I never asked Mr. Salkin myself. Probably I met Mr. Salkin, but the ar-

rangement had been made with Mr. Halperin and Mr. Salkin to move the theatre up,—not with me.

Q. Do you remember my asking you, "just tell us what was said there?"

And do you remember that you answered this way:

"A. I asked Mr. Salkin about having the Hamilton to waive some clearance, to let the Hamilton play not
1775 ahead of the Jackson Park but after the Jackson Park, but in the same week. For instance, pictures that played on Sunday and Monday at the Jackson Park, have the Hamilton play them Thursday or Friday of the same week, and the admission price will be the same; we charged the same admission price as Jackson Park was doing, which we were doing today. He agreed to that, and we played the pictures for about hix months that way. Later he called one day, and he said Mr. Bloom objected very strenuously to the Hamilton Theatre continuing playing the pictures in the same week with the Jackson Park, and asked us to please—he asked me, asked the compenies to please—to have the Hamilton repeat the following week, which we did. That is the conversation that I know."

The Witness: No,—

Mr. McConnell: Now just answer the question. Did you make that statement?

The Witness: I did make that statement, but—

Mr. McConnell: All right, that is all I want from you at this time. Your counsel can give you any explanation that you want to make.

1776 Q. Mr. Coston, do you remember acting as a booker?

Mr. O'Brien: Excuse me just a moment. Mr. McConnell is going in, or tends to go into this same matter as we had on the other witness, Mr. Leo Salkin. I want to be heard on the matter out of the presence of the jury.

The Court: Well, we will let the jury adjourn until tomorrow morning, then, and we will hear you on this matter now.

The jury may be excused until tomorrow at ten o'clock.

Mr. McConnell: Pardon me—counsel wants to make an argument?

The Court: On a point of law, yes.

(The jury here left the court room)

1777 (And thereupon the following proceedings were had out of the presence and hearing of the jury:)

The Court: Get your record straight. You better let him read into the record the question he wants to ask. Otherwise there won't be anything for you to object to.

Mr. O'Brien: Yes. I assume, Mr. McConnell, you are going to go into the matters in this affidavit.

Mr. McConnell: Well, the particular question, your Honor, had nothing to do with the affidavit, but I was going to go into the affidavit.

The Court: That is what he is talking about. He wants to argue that point out as to whether or not you have a right to go into that. I imagine, to get your record straight, you better state something in there so we will see what he is arguing his objection on. Right now, he has asked the jury to step out. That is as far as we have gone.

Mr. McConnell: I don't know what counsel has in mind. What I am going to do here is, starting to do, is to use the affidavit signed by Mr. Coston himself, as an impeach-

1778 ing document. I am not referring to the Salkin affidavit at all. I am referring to an affidavit made by Mr. Coston.

Mr. O'Brien: Well, to impeach what?

Mr. McConnell: To impeach the witness on the document. He may not be impeached. He may admit the affidavit. It is the same situation we had here on the other matter.

The Court: Well, that is what he wants to go into. He insists we are wrong on our earlier ruling the other day, and we may just as well have it out.

Mr. O'Brien: Not only do I think that is so in the ruling the other day, but I think the situation here is quite distinguishable, even beyond what was said then.

I did not ask Mr. Coston any question on direct-examination on which any matter in that affidavit could possibly have the slightest relevancy.

The Court: I think that one question you asked him—

Mr. O'Brien: No.

The Court: (Continuing:)—threw the whole matter open.

Mr. O'Brien: Now, just let us see about that.

1779 That affidavit and the conversations to which Mr. McConnell in the past has alluded, and evidently in-

tends again today to allude to, transpired in 1926 and '27. I have asked this witness—

The Court: Well, he claims this conspiracy goes back before then.

Mr. O'Brien: I don't care about that. The record shows that Coston and others have testified that Warner Bros. Circuit Management Corporation has existed since 1930, and not before; and Warner Bros. were not here before; and the question that I asked Mr. Coston was whether he knew of any conspiracy or agreement on the part of Warner Bros. Circuit Management Corporation calculated or intended to have the effect of putting the Jackson Park out of business, or adversely affecting its business. That was the scope of the question.

Now, I submit that no question having to do,—well, I may say this: The record further affirmatively shows that Mr. McConnell admitted, when other witnesses were on the stand, that Mr. Coston in conversations referred to back in 1926 and '27, was not connected in any fashion with Warner Bros. or any of its companies.

1780 Now, no question having to do with conversations between Mr. Coston and some one else, which took place in 1926 and 1927 has the slightest bearing on the question or on any matter which Mr. Coston testified to on direct-examination.

It would seem to me to be self-evident, and on this general rule or pattern which has come about here on this subject, that asking a witness whether he knows of any conspiracy, whether that lays the door open to impeachment is a separate subject. I don't think it does, that question, but whether it does or not I say that Warner Bros. admittedly, Warner Bros. Circuit Management Corporation had no existence until 1930, and could not possibly have been involved in anything which occurred at the time or in any of those conversations; and I think the matter. It would be highly prejudicial, therefore, to my clients, to permit Mr. McConnell, under color of impeaching, when it must be very plain to the Court that it can serve no purpose of impeachment, or contradicting anything that the witness has said, but under color of doing that, to permit him to examine on this affidavit made back in 1928, about

conversations in 1926 and '7, at a time when he was
1781 not working for any of the defendants, and at a

time when the particular defendant did not even have an existence.

Now, your Honor at the last session cited this case in the 341 Illinois. That case makes it very plain that the foundation which is sought to be laid, and the impeaching questions put in relation to it, must relate to testimony given on direct, which appears to be inconsistent, inconsistent with something that the man had said some other place, either in writing or in oral conversation.

Now, Mr. Coston's assertion that he knows of no agreement on the part of Warner Bros. Circuit Management Corporation to favor in its behalf its theatres over independents is not in any way contradictory. That is not at all inconsistent with anything which Mr. McConnell could read from that affidavit if he read the whole thing in.

The Court: That was because you said that affidavit was made before Warner Bros. were a part of this alleged conspiracy. That is not quite the point that has been raised the other day.

Mr. O'Brien: That is very true.

The Court: That is, you are arguing two differ-1782 ent things now. I see your point.

Mr. O'Brien: I say I am not interested in the ruling of the other day. That did not affect me, anyhow.

The Court: The other day you were quite insistent that that question was not properly asked. The man did not make an absolute denial of it. He had no recollection. He was not certain about it; and the reason I brought that case up was to show you it does not matter what language he used.

Mr. O'Brien: The case your Honor cited did cover that point.

The Court: That is the reason I brought it out. That is not the point you are talking about here.

Mr. O'Brien: That is true.

The Court: That is a different point. I do not know what this situation is. I don't even know what this affidavit is. You told me it was the same that happened here the other day. That is the reason we suspended the proceedings. Your point here is—

Mr. O'Brien: I merely wanted to give your Honor, I was trying to accurately represent what was coming up. I did not want to speak of it before.

1783 The Court: That is the same affidavit. We had not heard of this one he is talking about now, but I see your point here. Your point is: let us assume this thing did happen, but it is outside the date of the conspiracy, that is, outside of the time alleged in which your particular defendants were even in existence.

Mr. O'Brien: That is right. The coporation was not even set up.

The Court: What do you say about that (addressing Mr. McConnell)?

Mr. McConnell: I say this, if the Court please, the question goes to the knowledge of this particular witness.

Mr. O'Brien: If you want to make him your own witness, that is something else.

Mr. McConnell: Just a minute.

Mr. O'Brien: I am sorry.

Mr. McConnell: The question was here as to whether he had any knowledge of any conspiracy, or any agreement, or any understanding which affected Warner Bros. Circuit Management Company. Now, the man is Manager of Warner Bros. Circuit Management Company.

At the time that I was attempting to go into the 1784 facts, Warner Bros. was one of the parties that was involved in that situation. The affidavit tends to show, or does show, that Mr. Coston is a booker for the Granada and Marbro Theatres, attempting to negotiate product from the distributors, the same distributors which are involved in this case, that he could not get the product because of the opposition of Balaban & Katz.

Now, my point is this: That when you go into the knowledge of a man, we are entitled to go into the facts of his knowledge, and if, with knowledge of a conspiracy, which he says existed at that time, in his affidavit, if he joins it and becomes a party to it, and he is there with his company in it, it certainly is cogent proof, it certainly is relevant to the subject under discussion. It goes to the question of whether or not he has the knowledge or lack of it which counsel sought to interrogate him about on his direct examination, and it certainly is close enough connection to lay the basis for my attempt to impeach him, when he says that he has no knowledge, because he had the knowledge, according to his affidavit, at the earlier

date, of the very thing we are complaining about in this case.

1785 Mr. O'Brien: Now, let us see. Mr. McConnell, your affidavit, you told the Court that that suit related to the distrubutor defendants.

I would like you to point out to the Court where either Vitagraph, Inc., or Warner Bros. Pictures, Inc., or any of my defendants here were defendants in that suit. They are not even named.

Mr. McConnell: I didn't say that they were defendants in that suit.

Mr. O'Brien: Just a minute.

The affidavit shows in another part, which would not be available to me, that Warner Bros. sold their product to these houses, and did not refuse to sell. So what you have got is a conversation or statement by a man who was in no way connected with any of these defendants, arising out of an attempt to book product from other distributors.

We had no part in it. He did not represent us. He was not trying to book it from us. He was getting our product, and he does not impeach anything that Coston has said on the stand here on direct.

The Court: I don't know yet what the affidavit is. It is all a mystery to me.

1786 Mr. O'Brien: If you don't know, then I must go on to say I know what it is.

The Court: I don't know.

Mr. O'Brien: Here it is.

The Court: I have never seen it.

Mr. O'Brien: Well, you remember we had an argument here about this Marx Brothers suit. Mr. Adcock had a big bunch of records.

In that suit there were numerous affidavits. One of these affidavits was made by Mr. Coston four years, anywhere from two to four years before he ever became connected with any Warner Company. And in that affidavit he says that he was a booker and a buyer, Coston's Booking Circuit, and the Marx and Marbro Theatres had been built, large theatres on the west and north sides, and that he went around to certain named distributors, not including Vitagraph, not including Warner Bros., that he tried to buy pictures for those Theatres, and the substance of what he relates there is that he was unable, in most in-

stances, to get them because they had sold the product to B. & K., or had agreements to sell, although in the same affidavit he said that insofar as the houses on the
1787 south side were concerned, the Capitol and the Avalon, they were buying product notwithstanding that B. & K. was buying for the Tivoli and Southtown. They did the same thing on the north side and west side.

Now, the affidavits prepared in that suit, in connection with the motion for injunction made on both sides by the different lawyers, goes on to say in the affidavit that he approached Fox. Fox sold him product. He approached Warner Bros. Warner Bros. sold him product, and did not refuse to sell him product, but there is a good deal of stuff in that affidavit, from beginning to end, in which he inevitably drags in a lot of things which it had not been necessary to drag in up till now, towards the end of this case.

I reiterate that I am in no way bound by conversation which Mr. Coston is supposed to have had when he was not acting for us, but in that way, but beyond that, he has not said anything here that anything in that affidavit would tend to impeach.

Does he know of any agreement on the part of Warner Bros. Circuit Management Corporation to favor its affiliated theatres over the independents, and more par-
1788 ticularly the Jeffery over the Jackson Park? Now, what in the world has that north side situation got to do with that?

The Court: Because Warner Bros. was not in existence at that time.

Mr. O'Brien: It was not.

The Court: Suppose they joined a conspiracy and participated, aren't they bound by all of the ramifications of the conspiracy?

Mr. O'Brien: Well, but it would have nothing to do with an incident—

The Court: Sir?

Mr. O'Brien: (Continuing:)—of the kind narrated in that affidavit, nor is there any proof that they joined a conspiracy; they are operating their theatres in the same position in which they bought and acquired them.

The Court: Of course, there is a charge here that they joined.

Mr. O'Brien: There may be a charge, yet there isn't any proof of that, that they joined.

The Court: They think there is, or there wouldn't be any lawsuit.

Mr. O'Brien: I don't know about that.

The Court: Isn't that the theory upon which they 1789 brought this suit?

Mr. O'Brien: I don't know what the theory is. I am talking proof.

The Court: I understand this: Are you charging conspiracy among these different defendants (addressing Mr. McConnell)?

Mr. McConnell: Why certainly.

The Court: I thought that is what you are charging.

Mr. McConnell: That is what we have been trying here all along.

Mr. O'Brien: The question is whether Mr. Coston—

The Court: I understand that, but I put the other question to you. You act as if the thought of a conspiracy is something so foreign to what has been going on here, it kind of shocks me. I thought that is what this lawsuit was about.

Mr. O'Brien: It would shock me if you want to talk evidence, not the theory of it. Yes, I would be shocked about it.

The Court: That is all right, I thought this was—

Mr. O'Brien: But plainly—

The Court: (Continuing:)—the theory of this law- 1790 suit. Now, if that seems to shock you, then maybe I don't understand it. But they say very definitely here that they allege a violation of the anti-trust law, which is in itself a conspiracy. I understood that was what this is in court about.

Mr. O'Brien: I do not deny Mr. McConnell has a right to put in any competent, material evidence that he has to support that theory.

The Court: I see a very good reason why there is much merit to your objection, but not from the standpoint that the suggestion that a conspiracy might exist here is so foreign to what we are talking about, as to shock people around here. That to me is almost laughable.

Now, if you are proceeding on that theory, we might just as well stop it right now.

There is another theory here which you advanced, which

I think is a good theory. Coston is not an individual defendant here.

Mr. O'Brien: That is right.

The Court: What he said or did while he was acting as an individual, is something that is not binding on this corporation with which he might be connected at the present time.

1791 Mr. O'Brien: That is right.

The Court: I see a whole lot of merit to that kind of objection, but to the other I do not see much to that. But the proposition that when he said and did the things recited in that affidavit, he said and did those things as an individual, I think that is a good objection.

Mr. McConnell: If the Court please, you will recall I made that objection on behalf of the four plaintiffs in this case, and your Honor permitted counsel to use it for impeaching the witness, but limited it with instructions to the jury as not binding upon the clients, and I think that would solve that objection here.

The Court: What is that?

Mr. McConnell: Do you remember the affidavit or the statement which Mr. Salkin had about minimum admission prices which counsel used?

The Court: You mean the one of these independents?

Mr. McConnell: Yes. Counsel used it to impeach the witness with, and I objected on the ground that my clients could not be bound by it because it happened before they acquired the Theatre. Your Honor ruled that

1792 he could use the statement for impeaching the witness, but instructed the jury, you will remember, that my clients were not bound by it. And I think that takes care of what your Honor has in mind about his clients not being bound. I am not trying to bind his clients by this particular affidavit, but I am trying to show that when this witness says he has no knowledge, as an individual, of a conspiracy, he did not just ask him whether he had knowledge of an agreement; he asked him whether he had any knowledge of any conspiracy, and it certainly goes right to the heart of that, as to whether he has that knowledge. He says he had it back here at this earlier date.

Mr. O'Brien: Of course, that is not so. It would be a very simple matter to have the question read, but just let us look:

Suppose Mr. McConnell picks up the affidavit and starts asking: Now, didn't you on a certain day say so and so, so and so, so and so? He admits he says all of those things, or he denies it, or doesn't remember, or whatever the case may be. Let us say he admits it, or denies it, either one. What statement that he has made here does that
1793 contradict? Did those conversations, those conversations, now, I am not talking about other things, do those conversations prove that Warner Bros. Circuit Management, or is there anything in it to show that the Warner Bros. Circuit Management Corporation had any agreement with anybody to act against the interests of the Jackson Park Theatre?

The Court: What do you say as to the similarity between this and the affidavit that he was talking about? You folks insisted, you know—

Mr. O'Brien: Well, I say this: When Mr. Salkin was on the stand, I mean Richard Salkin, I asked him about this release system, and what he thought of it, and he testified, your Honor will remember, in so many words, that he thought the release system was all wrong, it was a bad thing. I wanted to know for how long he thought that, and his answer was he always thought that, always, right back from the time he came to the theatre in 1927. Then I asked him specifically if he thought it was a bad thing in 1932, 1931 and '32, and he says: Yes, he did. He thought, always thought it was bad. All right.
1794 Now, there on one side was what he said about the release system, that he thought it was always bad, always thought so, and over here was a statement in writing, signed by him, himself, signed in 1932, in which he said that that release system, or whatever you want to call it, was a very fine thing, and essential to the welfare and security of the independent exhibitors.

Now, what did that amount to? That immediately—you don't need to look into the law at all, just on common sense, that amounted to a direct contradiction of what he testified to under my questioning on the stand, direct contradiction, no legal theory.

He said he was always "agin" it, and over here he said it was a fine thing, in 1932.

Now, I say, let us check it up that way with Mr. Coston. He said that he doesn't know, no knowledge of any conspiracy on the part of Warner Bros. Circuit Management

Corporation to put the Jackson Park Theatre out of business or to adversely affect its operation. That is what he says over here on this side.

Now, what has Mr. McConnell got which even tends to contradict that statement? Not a thing in that affi-
1795 davit. That is not really his purpose. If your Honor would read the affidavit you would see that there is not a word in there which tends to contradict that statement of Coston's. He wants to read that in so as to get that before the jury under color of a claim that it is contradictory. He can not show you any statement in that affidavit which contradicts what the witness said on the stand.

Nothing in that affidavit which tends to show or even claims to say that Warner Bros. Circuit Management Corporation had a part in anything, nothing contradictory, and I say that would be highly prejudicial to permit that thing to be read as against my client.

I would invite Mr. McConnell to show you any statement in there that he would like to read, which he claims he can show is contradictory to the statement made on the stand, that he has no knowledge of any agreement or conspiracy on the part of Warner Bros. Circuit Management Corporation to do anything for their theatres. It is easy to see if you look at it.

Mr. McConnell: Warner Bros. Circuit Management
1796 Corporation the records show, is a wholly owned subsidiary of Warner Bros. Pictures.

Mr. O'Brien: There is not anything in there in which anything is said about Warner Bros. Pictures, or Warner Bros. Theatres, Inc. There is not anything in there which says a word about Vitagraph, Inc., that is in any way inconsistent with what Mr. Coston said. Neither Warner Bros. Pictures, Inc., nor Vitagraph, Inc., were defendants to that suit.

All the other distributors, or most of them, were in there.

Mr. McConnell: It is not a question of a suit. I am not bringing in here pleadings or any issues in the suit. This is an affidavit which was made by this witness, in which the gist and general tenor of it is that when he was on the other side of the picture, when he was on the outside looking in, when he was trying to get pictures for the Marbro and Granada Theatres, where they had these de luxe houses, which they have said all through this case entitles a man to pictures, when he was on the other side of the

fence he could not get the pictures from Warner Bros. or anybody else.

Mr. O'Brien: Now, wait a minute. Why, what are
1797 you talking about?

Mr. McConnell: Just let me finish, will you please?

Mr. O'Brien: Just look at the affidavit.

Mr. McConnell: (Reading:)

"Affiant further states that after he had leased for exhibition a large part of Warner Bros. product for exhibition in the Marbro and Granada Theatres, Mr. Clayton Bond, District Manager for said Warner Bros., told affiant 'they were paying through the nose' for leasing pictures to said Marbro and Granada Theatres, and that they had lost a lot of business which they might have obtained through the Balaban & Katz organization."

The only implication you can get from that is that he was having difficulty with Warner Bros., and a lot of distributors trying to get product for his Granada and Marbro Theatres.

Mr. O'Brien: Well, that is not so.

Mr. McConnell: That is what he was trying to show, that there was a conspiracy here. That is what the purpose of that affidavit was.

Mr. O'Brien: That is not true. Why don't you read to the Court the part where he says that Warner Bros.
1798 sold them their product, then he says that after they had sold their product, he had a conversation with somebody, and that was said, and then he does not say that there was any refusal on the part of Warner Bros. to sell product, to sell him product for the next year, not a word.

Mr. McConnell: Well, it seems to me that if we show this witness had knowledge—

Mr. O'Brien: Please don't interrupt. Let me finish the statement.

Mr. McConnell: Go ahead.

Mr. O'Brien: You have read a section. He has read a section which says: "Affiant further states that after he had leased for exhibition a large part of Warner Bros. product for exhibition in the Marbro and Granada Theatres, the District Manager of Warners told affiant that they were 'paying through the nose' for leasing pictures to the Marbro and Granada, that they lost a lot of business which they might have obtained throught the Balaban & Katz organization."

Well, suppose he did tell him that? Assume that to be true. Assume that was not a mere puffing to get a better price for Warner's product in the next season's deal-
1799 ing. Assume that that was said, does that contradict Coston? Does this statement even say that Warner Bros. Pictures, Inc., was in any conspiracy, when the very affidavit says they were selling the product contrary to what was being done in other companies? Warners didn't have any commitment to B. & K. They sold Marx Brothers, but do these words contradict what Coston says that Warner Bros. Circuit Management Corporation had no agreement to put the Jackson Park out of business? Does this thing say that Warner Bros. Circuit Management Corporation had entered into, at any time, any agreement calculated to put the Jackson Park Theatre out of business?

The statement that after Coston had leased for exhibition a large part of the Warner Bros. Pictures' product, the District Manager of Warner Bros. told him, told him that they would not lease him any more, told him that they were paying through the nose because they did not lease to B. & K., because they had sold it away, and lost a lot of B. & K. business. That does not contradict Coston in any sense.

I want to distinguish again, your Honor, this is not
1800 a question of trying to limit Mr. McConnell in any direct evidence of proof which he may be able to make in support of his contentions or his theory.

The basic question here is what, if anything, is there in this affidavit which reasonably tends to contradict what Mr. Coston said here in court this afternoon on the stand, and there is not anything, and those questions are error, and it would be highly prejudicial.

I didn't ask Coston. I didn't ask Coston what he knew generally. I asked him whether Warner Bros. Circuit Management, operating these theatres, made any agreement with anybody with reference to the Jackson Park Theatre. That is all I asked him.

If he wants to call Mr. Coston, if he wanted to call him as a part of his case, he has had this affidavit all along. He could have put him on the stand and asked him about it. You know that. He has been here right in town.

Mr. McConnell: Are you through?

Mr. O'Brien: Yes.

1801 Mr. McConnell: If the Court please, it seems to me that it is a very narrow base that Mr. O'Brien

wishes to assert here, when the question is, does this witness know, does he know, has he known, has he said in the past whether or not there is a conspiracy here, which is the same sort of a thing. Now, here he is saying that Balaban & Katz controls the industry, that the Marbro and Granada Theatres, owned by Marx Brothers, could not break through the situation as it existed at that time. He was trying to negotiate for them. He was in our position, and he saw that situation.

Now, he steps across the line, according to our theory of this case, that he knows what happened before. He knows what Balaban & Katz and the distributors were doing, from personal experience, and it seems to me when he testifies that he has no knowledge, when he gives himself a clean bill of health, and a blanket exemption from the inferences which arise in a conspiracy, that the fact that he knows there was a conspiracy in 1928, that he knows facts from which the essential elements of conspiracy must be inferred,

and he must have been able to infer them, he knew
1802 what was going on. Now, he comes in here and he
says he knows nothing about it at all. I think it is most cogent.

Now, so far as Mr. O'Brien's statement about his client not being bound, and about coloring the evidence, and all of that, we had that same argument before your Honor on that other document, the document which was highly prejudicial to my clients, which did tend to impeach the witness, although the witness did not say what Mr. O'Brien said, exactly. What the witness said was that at one time he thought he could go along with the system, and then later he changed his mind and decided he could not go along with the system, and it did not have very cogent relevance to the impeachment of that witness, but nevertheless it went in under the safeguard which your Honor gave it.

Now, it seems to me if this is limited simply to the impeachment of the witness, and the jury are instructed that these clients are not bound by what Mr. Coston says back in 1928, that we have got exactly the comparable situation. It is relevant, and if he says he has no knowledge, and he now

admits this, it tends to impeach him on the present as-
1803 sertion of innocence of all knowledge.

I submit we have a right to read this affidavit to the witness, as a basis for the impeachment.

Mr. O'Brien: I can not argue any further without reiterating. I think I made it plain.

The Court: What do you want to say, Mr. Seeley?

Mr. Seeley: Of course I just wanted to say this: That apart from the stand of Mr. O'Brien's clients, I have three clients here, and in order that I do not have to state the basis for my objections before the jury, if this thing goes any further, I want to state now what I will be referring to, if the defendents go further, and I object.

We are past the plaintiffs' case.

I believe that what he is trying to do here, and what the effect of it will be, is to prove a part of his main case. Now, the time for that is past. Many of my principal witnesses have come from distant points and have gone again, and I do not believe that anything which could come out
1804 of this document now can be binding upon my clients.

Furthermore, I would like to make this point: I cannot accede in any degree to Mr. McConnell's feeling that the facts appearing in these affidavits indicate a conspiracy. Here I represent three film distributors, and we already know that with respect to Marx Brothers, one of them, RKO, always sold Marx Brothers, and never sold B. & K. during that period. We know that the second one, Fox sold the Marx Brothers, except for four pictures, in the last year. And we know that the third one, Loew's, always sold Balaban & Katz.

Now, out of such diverse conduct, I do not see how any possible inference of a conspiracy among the clients that I represent can arise from those facts, and I therefore think the entire subject matter is immaterial and irrelevant and incompetent, and my objection will be based on that ground also.

Mr. O'Brien: I did want to say, your Honor, that you cannot cure the matter by telling the jury that those statements made by Mr. Coston are not binding on our
1805 clients. That is not what is at issue here. What we have got at issue here, and the question as to whether this evidence goes in, depends upon also whether it truly contracts what Mr. Coston said on this stand, and that is all, and there cannot be a thing pointed to in that affidavit which does that. Rather, the whole purpose of having it read is to try to throw a complexion out there of something which is not contradictory at all, but which is otherwise prejudicial.

Mr. Adcock: If the Court please, I do not think I will have anything in particular to say about this, except this, that I think it depends entirely upon the question that was asked by Mr. O'Brien of Mr. Coston, and which he answered, and I must confess I did not hear the question. I was a little ways off from the questioner.

The Court: He asked him one of your pet questions.

Mr. Adcock: Pardon?

The Court: He asked him one of your pet questions.

Mr. Adcock: Yes, but he asked, as I understand it,
1806 whether Mr. Coston was—whether there was any agreement between the Circuit Management Corporation.

Mr. O'Brien: I wonder if we can have that question read?

Mr. Adcock: I thought we ought to have that written up so we can look at it.

The Court: I think the question you asked him was whether or not he knew anything about this alleged conspiracy.

Mr. Adcock: No.

Mr. O'Brien: No, I did not.

Mr. Adcock: Oh, no, no. That is w ere the confusion comes in.

The Court: All right. Let us have the question written up, and we will have it here in the morning.

Mr. O'Brien: It is the last question I asked of Mr. Coston on direct.

The Court: I thought it was one of those typical questions which Mr. Adcock has been asking around here.

Mr. O'Brien: No.

Mr. Adcock: No.

The Court: Let us have it written up in the
1807 morning.

Mr. Adcock: I think those questions were quite different from the questions, as I understand it, as put by Mr. O'Brien.

The Court: Will one of you have that written up, so we will see what it is?

Mr. Adcock: It will be written up.

(Whereupon an adjournment was taken until 10:30 o'clock A. M., Tuesday, March 7th, 1944.)

1808. IN THE DISTRICT COURT OF THE UNITED STATES.

• • (Caption) • •

Before IKOE, J., and J.
Tuesday, March 7th, 1944,
10:30 o'clock A. M.

Court met pursuant to adjournment.

Counsel present:

Mr. McConnell,
Mr. Korfist;
Mr. Adcock,
Mr. Goldberg,
Mr. Seeley,
Mr. O'Brien.

(And thereupon the following proceedings were had out of the presence and hearing of the jury:)

1809 The Court: You were going to have the part of that record written up.

Mr. Adcock: Yes, it is written up. I think it is here. I want to hand in some instructions here. I want to hand them to your Honor while I have an opportunity.

The Court: What is that?

Mr. Adcock: Some more instructions. I have them in two batches; and then these relate to the theory of damages (handing to the Court).

The Court: Those are in addition to the ones Mr. Seeley gave us?

Mr. Adcock: Yes.

The Court: What about your forms of verdict? Have you folks thought anything about that?

Mr. Seeley: Well, no, I hadn't. I thought perhaps the Court had the standard forms.

The Court: Well, we do, but I suppose as to the forms in this case, you will have two regular forms, either they are all guilty, or they are all not guilty, and then you will have to have two forms for each defendant.

Mr. Seeley: Yes, that is the way it is usually done.

The Court: Now, where is this question that you
1810 said you were going to have the record written up on?

Mr. O'Brien: I have the transcript here, your Honor.

Mr. Adcock: I better get out of the way here.

Mr. O'Brien: I also have the affidavit I wanted to call to your attention.

The Court: The question is this, the one you have in mind, where you say: "Do you have any knowledge of any conspiracy Warner Bros. Circuit Management Corporation is engaged in to put independent theatres, or the Jackson Park Theatre out of business, or in any way adversely to affect the theatres?"

Mr. O'Brien: Yes, sir. That is the only question.

The Court: Well, as I see this situation, if they are going into impeachment along the lines that is suggested that they want to go, they are really going into quite a part of their case in chief by way of cross-examination.

Mr. O'Brien: That is my position.

The Court: I do not think this is the same as the situation presented when Mr. Salkin was on the stand. Therefore, your objection will be sustained.

How many more witnesses do you folks have?

Mr. O'Brien: I have one more witness, your Honor.

1811 The Court: Outside of Mr. Coston?

Mr. O'Brien: Outside of Mr. Coston, and that is all.

The Court: Then you have some rebuttal, Mr. McConnell?

Mr. McConnell: I have two witnesses, if the Court please. I think they won't take over an hour.

The Court: Maybe you will finish the testimony today, then?

Mr. McConnell: I think so.

Mr. O'Brien: I should think so.

Mr. McConnell: I think we should.

The Court: After we finish that, we can sit down and talk about these instructions that both sides have handed in.

Bring in the jury, Mr. Marshal, please.

1812 (Thereupon the following proceedings were had in the presence and hearing of the jury:)

JAMES E. COSTON, having been previously sworn, resumed the stand, was examined further, and testified as follows:

Cross-Examination by Mr. McConnell.

Q. Mr. Coston, you said that you had various activities in your Beverly Theatre with reference to the Parent Teachers Association and other community groups.

A. I do. We do in all the theatres. It is not only in the Beverly, it is in every theatre, practically, we operate.

Q. And then you had two, what did you call them, two men that followed that up?

A. We have the exploitation men really, who specialize. The exploitation men are advertising men, whose job really is to specialize and concentrate his efforts in that particular work.

Q. Their work is to follow through after that other work is done to see that the theatre gets the benefit of that good will, as you call it?

A. Well, right.

1813 Q. So that you do have a business motive in all of that promotional work?

A. Well, if you call good will as a business motive.

Mr. McConnell: That is all. Just a minute.

The Court: Is that all, Mr. McConnell?

Mr. McConnell: Just a minute, if the Court please.

Q. Do you recall testifying in the Bioff trial down in New York?

Mr. Seeley: I object to that.

The Court: Objection sustained.

Mr. McConnell: That is all.

Mr. O'Brien: I just have a couple of questions, Mr. Coston.

The Witness: All right.

1814 *Re-direct Examination by Mr. O'Brien.*

Q. After you have arrived at an agreement for the pictures, run, and clearance, and terms, can you state who does the mechanical work of drafting the clearance agreement?

A. To my knowledge sometimes the distributor, and

sometimes our office does that; depends on the clerical work how it is arranged between the buyer or the film department in my office, and the distributor, when they enter into that contract.

Q. Now, your theatre out at Beverly, or rather your Beverly Theatre at 95th and Ashland, is immediately east of the community known—of the Chicago community known as Beverly Hills, is it not?

A. Well, the Beverly Theatre, yes, it is a part of Beverly Hills. We call Beverly Hills, really runs from that section; Beverly Hills is a little bit west of the Beverly, but that section is known as Beverly Hills, as the community of Beverly Hills.

Q. There was no other theatre near that community at the time the Beverly was built?

A. There was no other theatre there, and I don't believe there is any now in that community.

1815 Q. And where do the patrons of the Beverly, for the most part, come from, if you know?

A. Well, come south as far as Morgan Park, 111th Street, all that section there. It is a rather wide area. It is scattered all over the southwest side there.

Q. And more recently there has been a theatre built west of Western avenue, on 95th Street called the Coral, has there not?

A. Well, that is about two miles west of Western. That is Evergreen Park.

Q. In Cicero, Cicero Avenue?

A. Yes, about there.

Q. And that is an automobile ride on 95th street from Beverly Hills, isn't it?

A. Well, it is at least a little over three miles from the Beverly to that Theatre, or approximately that.

Q. When was the Coral built; do you remember?

A. I don't remember, about two or three years, two years ago, three years ago, something like that. I have passed the Theatre, but I don't come in inside.

Q. Now, yesterday Mr. McConnell asked you, it seemed to me as a mere pleasantry, whether you knew every-

1816 body in the distributing business, and whether you met with some of these folks socially, and played golf

with them, and then he observed, "Well, everybody knows everything about the motion picture business"; and you said there were no secrets in the motion picture business. Were you serious in that statement?

Mr. McConnell: I object to whether he was serious.

Mr. O'Brien: I want to know what he meant by that.

The Court: Well, that is a different question as to what he meant by that. The first question was, was he serious. I take it he was serious. He was under oath.

Mr. O'Brien: Q. What did you mean by that statement?

A. Well, we have a saying in the motion picture industry, there is no secret in the film business, which is so, I mean regarding theatres, how they are built, regarding various matters in the motion picture business. I think Mr. McConnell, when he asked me that, he meant there is no secrets in it. Sometimes you meet a fellow at lunch, you exchange ideas with him. Mr. Salkin, I used to see him very often years ago. Well, we exchanged ideas
1817 about different things. That is right.

Q. Do you know what pictures are being produced?

A. Pardon me?

Q. Do you know what pictures are being produced?

A. Well, we read the trade magazines, various film dailies, in advance. They give us notice whether such and such a picture is in production, and those things you read in the daily papers, weekly papers.

Q. Let me ask you: Did you mean by that that you know what contracts other exhibitors have with any of the distributors?

A. No, not contracts. I don't know anything about contracts.

Q. Do you know anything about their affairs except such as where a matter is of general knowledge and observable as such?

A. Well, as far as contracts are concerned with other exhibitors, I certainly don't know what the contracts are, or what the terms or other things might be, but I mean in general, about meeting with people socially, after all I know most of the people, I have been in business some thirty-three years, I meet with them.

Mr. O'Brien: All right; that is all.

1818 Mr. Adcock: I want to ask you just one question.

The Witness: Yes, sir.

Examination by Mr. Adcock.

Q. The Beverly Theatre is located at Ashland and 95th Street?

A. Correct.

Q. And the Coral Theatre is located at Cicero Avenue and 95th Street?

A. Correct.

Q. That is four miles, is it not?

A. Approximately that. I don't know the exact distance, but I know it is nearly four miles.

The Court: Is that all?

Mr. Adcock: That is all.

Mr. O'Brien: That is all from me.

The Court: Mr. McConnell, do you want to ask him any more questions?

Mr. McConnell: No, your Honor.

Mr. O'Brien: That is all, Mr. Coston.

(Witness excused).

1819 Mr. Adcock: Mr. McConnell, in cross-examination, asked Mr. Immerman to prepare a statement showing the changes in performances per week, and the number of pictures played in the years 1936, 1937, 1938, 1939, 1940, 1941, and 1942 at the Maryland Theatre.

I have that information. I have had it for some time. I forgot to give it to you, and if I may have this document marked our next Exhibit, Paramount-B & K. Exhibit 16, I will ask that it be offered in evidence.

Mr. McConnell: No objection.

Mr. Adcock: That shows—

The Court: Any objection?

Mr. McConnell: No objection, if the Court please.

Mr. Adcock: I may state what totals appear:

For the year 1936, the total number of pictures played at the Maryland was 168:

For the year 1937, 220:

For the year 1938, 218:

For the year 1939, 212;
For the year 1940, 230;
For the year 1941, 238;
and up to July 28th, 1942, 128 pictures were played, and on this Exhibit the different changes per week are
1820 shown.

The Court: All right.

(And thereupon the said document so offered was received in evidence as Paramount-B. & K. Exhibit 16, and is in words and figures as follows, to-wit:)

1821 The Court: Do you have another witness?

Mr. O'Brien: Mr. Gilliam.

TOM R. GILLIAM, a witness called on behalf of the defendant Vitagraph, Inc., having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. O'Brien.

Q. Will you state your full name, Mr. Gilliam?
A. Tom R. Gilliam.
Q. Where do you live?
A. Maywood, Illinois.
Q. Were you the Chicago Branch Manager of Vitagraph, about August of 1936 until November of 1940?
A. I was, yes, sir.
Q. At the present time with whom are you connected?
A. Twentieth Century-Fox Film Corporation.
Q. In what capacity?
A. Branch Manager.
Q. And that has been true for how long?
A. Since May of 1943.
Q. Prior to May of 1930, I believe you were with First National Pictures?
A. I beg pardon?
1822 Q. Prior to May of 1930 were you with First National Pictures?
A. Yes, sir.
Q. When you came to Warners from that Company, were you familiar with the physical plants of the south side theatres involved in this suit?

A. Yes, I was.

Q. And what, if anything, did you do to acquaint yourself with the runs in which Vitagraph, Inc., had licensed those theatres to play?

A. I inspected records.

Q. What would those records be?

A. Cut off records, contracts, duplicate cut offs, which are actual duplicates of contracts having all the pertinent facts on them.

Q. Can you tell us whether at that time the Grove, Jeffery, Avalon and Shore Theatres were owned and operated by independents?

A. Was that in 1930?

Q. 1930?

A. I am quite certain they were operated by independents.

Q. I mean at the time you came to Vitagraph?

A. Yes, they were.

1823 Q. And was the same true of the Jackson Park, Hamilton and Lexington Theatres?

A. I am quite positive it is true, yes.

Q. Now, was the run in which Vitagraph, or the runs in which Vitagraph had licensed, before your time, the Grove, Jeffery, Avalon and Shore, any different than the runs in which you licensed them during the time you were Branch Manager?

A. They were the same as that which we licensed later.

Q. Were those Theatres, that is to say, the Jeffery and the Jackson Park, sold by salesmen?

A. During 1930, you mean?

Q. Yes. Let us take the Jackson Park first. Did you personally negotiate the deals for the pictures with the Jackson Park, or was that done by salesmen?

A. I didn't negotiate them. I can not say positively whether they were negotiated by salesmen or by the Branch Manager at that time.

Q. I mean, during your time as Branch Manager?

A. Oh, during my time?

Q. Yes.

A. By salesmen. The Jeffery Theatre?

Q. The Jackson Park?

1824 A. The Jackson Park Theatre, by salesmen.

Q. And did you give your salesmen any general instructions in respect to the sale of product to the Jackson Park and the other accounts that they were selling?

A. Well, the salesmen were given general instructions concerning the manner in which they were to sell the accounts, and the general instructions were to the effect that they were to sell on the same basis of clearance, playing position, as the previous season, uness there was some change which came up and was thoroughly discussed and approved by the Branch Manager.

Q. I take it that the salesmen were required to report to you, if that occurred, some question arose?

A. Yes, they were.

Q. Do you hear me all right, Mr. Gilliam?

A. Yes.

Mr. O'Brien: I am tired this morning. I cannot talk very loud.

The Witness: I hear you fine.

Q. Are you able to tell the jury the purpose of that instruction or what you had in mind as Branch Manager in giving it to the salesmen, not to change the prior run 1825 without discussion with you?

A. Well, the runs that were established for the various theatres had been the result of negotiations over period of time, and were what we considered best suited for the best interests of our company in selling our product.

Therefore, once we had runs established in theatres, we naturally did not change them unless there was some very good reason and considerable discussion regarding such a change.

Q. If a change were made, would it affect only the theatre procuring the change, or might others be involved?

A. Well, in my opinion it would not only affect the one theatre, it might affect ten, twenty, or even more theatres in the city of Chicago.

Q. Did you sell the Jackson Park the product of Vitagraph for the year 1936-37?

A. No, we did not.

Q. Do you remember the reason why?

A. Well, I recall the reason, yes.

Q. What was it?

Mr. McConnell: I object to the reason. If there was

some discussion he wants to go into, between the par-
1826 ties—

Mr. O'Brien: I don't care particularly.

Q. Did any of your salesmen ever report to you at any time that the Jackson Park had requested a different run than the run which you had licensed it to play?

A. Not to my knowledge.

Mr. O'Brien: I thought you were going to nod your head, and I was going to say the reporters would not get it.

Q. Is it true that the salesmen would render reports as to the visits made with each account, for the purpose of selling product?

A. Yes, sir, we required the city salesmen to make a daily report, five days each week, from Monday to Friday, inclusive.

Q. Suppose a conference took place in your office rather than at the account's theatre, and that you were present at the conference, would the salesmen in that case make a written report to you?

A. I don't believe he would. I think it is doubtful.

Q. Well, was it required that he do so?

A. It was not required, no.

1827 Q. Do you recall any conversation with Mr. Mager and Mr. Salkin, at your office?

A. Well, I do recall Mr. Mager and Mr. Salkin calling at my office.

Q. Was that at one or more than one occasion?

A. I think not more than one occasion.

Q. They were both together, and they talked to you?

A. As I recall, the ywere both together.

Q. What was the discussion, what was said?

A. As I remember the discussion, it was entirely concerning the matter of film rentals.

Q. Allright. What was said, and what was done about it?

A. A matter of adjusting film rentals that were then on an active contract.

Q. You mean that the Jackson Park had undertaken to buy certain pictures at stated prices and wanted them to pay less?

A. That is correct.

Q. Was a reduction granted or withheld?

A. To the best of my memory I believe that I granted them a reduction.

Q. Did they assign any reason why they wanted a reduction?

1828 A. Nothing other than their business was poor, and they needed a reduction in the film rental.

Q. Do you recall whether at that time either one of them requested a run in C week?

A. I have no recollection of such a request.

Q. Well, I think there has been some—would you say that they did not?

A. I would say that they did not, yes.

Q. Might they have said so?

A. It is possible they might, that they did say so, and I might have forgotten it. However, had they said so, I would have still had to tell them that we had sold our own theatre, the Jeffery Theatre, a prior run, and I had nothing available for them other than what we had to offer.

Q. Well, that is the fact, is it not, that you had sold and were selling the Jeffery Theatre in C week?

A. That is correct, yes.

Q. In direct competition with the Jackson Park?

A. Yes, sir.

Q. Do you recall the reasons which led you to sell the Jeffery in that run?

Mr. McConnell: I object to his reasons.

1829 Mr. O'Brien: I think it is highly material what his reasons are.

The Court: Read the question, please.

(Question read.)

The Court: He may answer that question.

A. Well, the reason we sold the Jeffery Theatre was because we felt that it was a better theatre, it was better located, it had more seating capacity. All in all we felt that it was a better theatre to sell in that position than the Jackson Park or any other theatre in that particular locality. Not only that, the Jeffery Theatre had been playing in that particular position for some time before that, even when it was not owned by Warner Bros. Theatres.

Mr. O'Brien: Q. Were there any reasons, Mr. Gilliam, why you did not license or consider licensing the Jackson Park to run with the Jeffery in C week?

A. Well, first, I don't recall any particular discussion with the Jackson Park people about the privilege.

Q. I mean as far as Vitagraph was concerned?

A. May I have the question again, please?

(Question read.)

A. Well, I have to repeat. First, I don't recall
1830 their asking for it.

Mr. O'Brien: Yes.

The Witness: Second, if they had asked for it, I do not think we would have been able to consider it, anyway, because in the first place, we would have felt it was good business to keep the theatres one ahead of the other.

In my opinion, if we sold the Jeffery and the Jackson Park Theatre on a day and date basis, where they charged equal admissions, they would simply divide the possible patronage at that admission level, and probably both theatres, instead of either one making any money, they might neither make their operating expense, with the result that we would have two theatres that would be claiming bad business, and we would have more trouble on our hands.

Q. Do you have any recollection of conversation or conversations with Mr. Mager and Mr. Sakin in 1937 or 1938, wherein they asked for a chance to bid for C week for product at the Jackson Park for the coming season?

A. I don't remember having any conversation with them to that effect.

Q. I believe it has been testified here that there
1831 was a conversation of that sort, and that you told those gentlemen that the contracts were not ready, the product for the next season was unknown.

Do you recall anything of that sort?

A. Well, if there had been such conversation, and it was prior to probably July, I would have to answer exactly that because I could not negotiate, we were not in a position to negotiate.

Q. Now, it is true, is it not, that in your negotiations to sell Vitagraph product, while you were Branch Manager, you would attempt to sell the most important houses first?

A. Yes, sir, that is true.

Q. And in this territory that generally meant Balaban & Katz, didn't it?

A. That is correct.

Q. What would be discussed in negotiations with Balaban & Katz; what were the subjects taken up, and what did the discussion—

A. Well, naturally, we have certain product which we are selling. You discuss, we discuss—

Q. I am speaking now of prior to the consent decree?

A. I understand. We discussed terms. We sold product at that time for the full season. We discussed
1832 terms on the product that we had for sale. We discussed—

Q. Will you explain "terms" a little more, so that the jury will know?

A. I mean by "terms" the film rental.

Q. Well, did you have the same rental for each picture, or how would they vary?

A. No. Film rental would be set up on the various types of pictures. We might have several brackets of pictures, three or four. We might have one bracket which we called the top bracket, which, we will say for an example, not trying to fit any particular theatre, might be $500. The next of which there might be six or eight pictures, the next bracket might be ten pictures of $350; the next bracket another ten of $250, and the balance $150. On that basis we discussed our film rental terms, and we discussed to a certain extent playing arrangement and clearance.

Q. Yes.

A. However, playing arrangement and clearance usually remained as it had been the previous season, unless there was some change, which either was requested by the distributor, or suggested by the distributor; that
1833 necessarily had to be discussed at great length because of the fact that any change, as I stated in my earlier testimony, could not only affect the one theatre involved, but could affect many other theatres throughout the city of Chicago. There is an endless chain goes around the town.

Q. In your first run pictures. They were commonly, they would commonly be in the highest bracket, wouldn't they? I mean your best pictures, first run?

A. I don't quite understand.

Q. Well, you mentioned brackets of $500 and so. Does that anywhere near appraise the film rental which you would request for showing, first showing, in the Loop, for the Chicago Theatre?

A. No. I tried to make clear that that could be—could not be attached to any theatre, because I merely used it for an example.

Q. I see.

A. I mean it could be $5,000, it could be $10,000.

Q. I see. Now, did you hear Mr. Coston's testimony on the—well, let me ask you, first: Would you reach a decision as to what the clearance was to be, whether you
1834 were carrying it over from the next year, or doing something now, before the contracts were signed?

A. Well, yes. I think that—

Q. Well, this is just preliminary. Now, I want to ask—

Mr. McConnell: Well, let him answer that.

Mr. O'Brien: Sure, go ahead.

A. I think that a matter of changed clearance, or changed playing position would be discussed before rental terms were discussed, because as far as I am concerned, I mean it might affect my rentals.

Mr. O'Brien: I see.

Q. Well, whatever the agreement was, Mr. Gilliam, my question really is this:

Who would see that the agreement which you reached was set down on paper and presented for execution as to clearance; would it be the distributor or the exhibitor, or how would you get to do it?

A. Well, it could be either one. If there were changes made, naturally pencil notations would have to be made of the changes, and incorporated into the contracts, the contracts changed from the previous seasons.

1835 I believe in most of my contracts we had clearance made a part of the contract. What I mean by that was it was typewritten into the contract.

Q. In those cases where you had a separate clearance schedule, it might be written up by either party?

A. It could be written by either party. It is a matter of copying.

Q. And as to the matter of minimum admission prices, is it true that those were carried over from the preceding year, as a rule?

A. Yes, I think in the same manner that the clearance and the playing position was carried over, because that had been established, and then continued on.

Mr. O'Brien: You may cross-examine.

1836 *Cross-Examination by Mr. McConnell.*

Q. Mr. Gilliam, the Jeffery Theatre is owned by a subsidiary of the Warner Bros. Pictures, Inc., is it not?

A. Yes, sir.

Q. And Vitagraph is also a subsidiary of that corporation?

A. Yes, sir.

Q. And when you say that the Jeffery Theatre was your Theatre, you mean by that that—

A. I am speaking—

Q. (Continuing.) It is all part of the Warner Bros. set-up?

A. That is right.

Q. And when you were determining as between the Jackson Park and the Jeffery, which one should have pictures, how they should have pictures, it was a question between your own theatre and some one else's theatre?

A. That is correct.

Mr. Adcock: Didn't hear the answer.

The Witness: I say that is correct.

Mr. McConnell: Q. Now, you stated that your negotiations usually took place with the most important theatres, and that in Chicago the most important theatres were owned by Balaban & Katz. Is that the gist of your testimony?

1837 A. Yes, sir.

Q. And the Loop runs, the Loop theatres were the ones that were negotiated by your Branch Managers or your chief executives here in Chicago, were they not; no salesmen negotiated those contracts?

A. No, no salesmen.

Q. Did you sit in on those negotiations yourself?

A. Yes, sir.

Q. And what was your position with the Company when you were so negotiating?

A. Branch Manager.

Q. And since you were selling the Loop runs first, you had to agree on a clearance schedule with Balaban & Katz?

A. Clearance schedule for the Loop first, yes, sir.

Q. And you had to agree on a clearance schedule for their whole chain, didn't you?

A. Not when we sold the Loop, no, sir.

Mr. McConnell: Let us have the clearance schedules of Warner Bros.

1838 Mr. O'Brien: I do not think that is there.

Mr. McConnell: What? You think it is not here, for Balaban & Katz?

Mr. O'Brien: I have an idea that you gave me this thing to have photostated.

Mr. McConnell: I want the clearance schedule of Balaban & Katz.

We will pass that for the moment.

Mr. O'Brien: I think you gave it to me to get photostated. There is a separate clearance schedule.

Mr. McConnell: Q. You say you did not sell any product to the Jackson Park in 1936 and '37?

A. That is correct, we did not sell our season's product.

Mr. McConnell: Let us see your contract for '36 and '37.

Q. I show you document which has been introduced in evidence here as Plaintiffs' Exhibit 13, and ask you if that is a contract for the product for the year 1936 and '37?

A. This appears to be a contract for 1936-37. I would have to study the contents real closely, to be sure, but I think it is. However, I perhaps have made a mistake in one season. There was a season in about '36-37, 1839 in which the product was not sold. I thought it was 1936-37.

Q. Well, whether or not you made a mistake, my question is whether that contract covers 1936-37?

A. Well,—

Q. I don't want you to take too much time. If you can not figure it out quickly, why, let it go.

A. Well, it appears to be—

Mr. McConnell: The contract speaks for itself.

The Witness: (Continuing.) a '36-37 contract.

Mr. O'Brien: What is the date of it, Mr. Gilliam?

The Witness: The date on the bottom of the contract is October 28th, 1936.

Mr. O'Brien: May I see the Exhibit?

Mr. McConnell: Q. Well, you did negotiate clearance with the whole Balaban & Katz chain, did you not? That was incorporated in one document?

A. I don't believe that I did it as Branch Manager.

Possibly previous to the time I was Branch Manager they did, but I still believe that I negotiated Loop clearance separately, and outlying clearance separately, because the deals were made at different times.

Q. Well, the contract, if you find it here—

1840 Mr. Adcock: I did not hear that. What was that question?

(Question read.)

Mr. McConnell: Q. (Continuing.) —would show whether or not—

A. (Interrupting.) That is right, it would, yes.

Mr. McConnell: Q. Your clearance was negotiated for the whole Balaban & Katz chain?

Mr. Adcock: I object to that.

The Court: Well, let us find the contract, then.

Mr. Adcock: It could not necessarily show when they were negotiated. They might negotiate with reference to the Loop at one time, and negotiate with reference—

The Court: Well, whatever is in the contract, the contract speaks for itself.

Mr. Adcock: It certainly does not show when they were negotiated.

The Court: I think we can agree on that.

Mr. McConnell: Q. Now, you say these minimum admission prices were set. You knew that they were set from season to season?

1840 A. That is right.

1844 Q. Were you familiar with the minimum admission prices for the different runs?

A. Am I now familiar?

Q. You were?

A. Oh, were. Yes, I was.

Q. And they were incorporated in your clearance schedules, were they not?

A. In our contracts.

Q. And you provided in your contracts if any theatre departed from that, they would lose their run or have some other—

A. I am quite certain there was a clause in there that they had some penalty attached in there, in case they violated it.

1842 Q. Well, you knew that the Balaban & Katz theatres took clearance over the Jackson Park, didn't you?

A. Yes, sir.

Q. And assigned to them the run of first week in general release?

Mr. O'Brien: I object to the form of the question that the Balaban & Katz theatres assigned anything. They did not assign.

Mr. McConnell: I asked him if he knew.

The Court: We will suspend this argument a minute until I see one of these judges in here.

(A short delay.)

Mr. Seeley: Mr. McConnell, the reporters, at my request, marked the individual sheets of RKO-Loew's-Fox Exhibit A, and they are now marked A-1 to 251, inclusive.

Mr. McConnell: That's all right. You have a lot of exhibits there.

Mr. McConnell: Q. Well, now, Mr. Gilliam, the time you came to negotiate with the Jackson Park, you knew that Balaban & Katz had clearance over the Jackson Park?

1843 A. I knew that the Maryland Theatre, you mean, had clearance?

Q. Well, didn't the clearance schedules of Balaban & Katz provide that the Jackson Park should play in first week of general release?

A. I believe some particular portion of it did, yes.

Q. So that you could not sell anything other than first week with that clearance outstanding?

A. That is right.

Q. Now, did you hear Mr. Rose's testimony about his talk with Mr. Mager and Mr. Salkin where they wanted C week from your company?

A. I did.

Q. Did he call that to your attention at that time?

A. I don't believe that was—I believe that he stated that he called that to the district manager's attention. I have no recollection—

Q. Well, you have no independent recollection of his calling it to your attention?

A. No, sir.

Q. Now, your Loop deals for film are on a percentage basis, are they not?

1844 A. During that period some were on percentage and some were flat; some of the pictures were on a percentage and some were on a given flat rate.

Q. What is the situation today?

A. I don't know what the situation is regarding Warner Bros. I am not with them.

Q. You are not with the company?

A. No.

Mr. McConnell: That is all.

Mr. O'Brien: That is all for me.

The Court: That is all, Mr. Gilliam.

(Witness excused.)

Mr. McConnell: Is that all the defendants' witnesses?

The Court: Is that all?

Mr. O'Brien: Yes. I may have one thing. May we have a minute, your Honor?

That is all.

Mr. Seeley: My clients rest.

Mr. Adcock: We rest.

The Court: The defendants rest.

(And thereupon the defendants rested.)

1845 The Court: Have you any rebuttal, Mr. McConnell?

Mr. McConnell: Yes, your Honor. Mrs. Bigelow, will you take the stand, please?

WHEREUPON THE PLAINTIFFS OFFERED THE FOLLOWING EVIDENCE IN REBUTTAL:

FLORENCE BIGELOW, called as a witness on behalf of the plaintiffs, in rebuttal, having been previously sworn, testified further as follows:

Direct Examination by Mr. McConnell.

Q. You are the same Mrs. Bigelow who has heretofore testified in this case?

A. I am.

Q. Have you made any research or investigation as to the present condition of your theatre, the Jackson Park?

A. Yes, I have.

Q. Have you made any investigation or research with reference to the Maryland or the Jeffery Theatres?

A. Yes, I have.

Q. There was testimony here that the carpets in the Jackson Park Theatre were not of equal quality to

1846 the Balaban & Katz theatre, the Maryland. Did you make any comparison of the carpets?

A. Well, the Maryland Theatre has quite a bit of the same carpeting, so far as anybody could see, as the Jackson Park Theatre has, and the Jackson Park Theatre has the same carpeting throughout, whereas the Maryland Theatre has three different kinds of carpeting in it, which in my opinion is not in very good taste. There is a section of carpeting in the lobby and the kind of carpeting that is in our theatre is in the foyer and the rear of the lobby, and there is a different kind of carpeting down the aisles.

Q. You say it is the same carpeting. Is it the same design, the same quality?

A. The same pattern, so far as anybody could see. I did not put my hands down to touch it or anything, but as far as your eyes could see I am sure it is the same carpeting.

Q. Did you make any comparison as to the seats of the two theatres?

A. Yes.

Q. The Maryland and the Jackson Park?

A. Yes. So far as I could see the seats of the 1847 Maryland were very inferior to the seats of the Jackson Park Theatre.

Q. In what manner?

A. Well, they were the same general construction, except the padding was not as thick as the seats of the Jackson Park, and they were not as comfortable. The angle of the backs was straighter and more comfortable, I think.

Q. Did you make any comparisons as between the shape of the auditoriums of the two theatres?

Mr. Seeley: I object to that. I think this witness may be a competent expert on carpets and the comfort of seat cushions, but I think if we are going to get into the field of theatre design, she has no qualifications.

Mr. McConnell: She is not testifying as an expert. She is testifying from her own view.

A. Well, the Maryland Theatre, as somebody testified, is architecturally designed in the shape of an octagon, which means the two sides of the theatre go far out, and I have to wear glasses and for me to sit in one of those octogons, which you might have to do if the theatre was crowded, would make it very difficult for me to see the screen 1848 with any degree of comfort. I would rather sit in a theatre that is oblong and a little narrower, so you can get a straight view of the screen instead of at an angle.

Q. Now, what is the situation in the Jackson Park? Will you describe that?

A. The Jackson Park is narrower and longer. It is in the shape of an oblong.

Q. And can you see from the side there?

A. Yes.

Q. Would you say you could see better or not?

A. Yes, you see better. You can see the screen, unless you are sitting down in the front row, at any kind of an angle.

Q. There was testimony here that the curtains on the side of the screen at the Jackson Park are not in good taste. What would you say as to that, as to the taste?

A. I don't see how they could be in poor taste. They are perfectly plain.

Q. And do you know the purpose of those curtains?

A. Well, I think they are put there to soften the screen, so that when the theatre is closed, rather the screen is not in use, they will soften up the looks of the auditorium; 1949 also, when the screen is in use, if anybody should bother to look at the sides or the top of the screen, it would soften the outlines to make them a little bit more attractive.

Q. Is there any design on the curtains at all?

A. I believe they are brocade of some kind, they are silky—silk-like stuff.

Q. What would you say about the taste or lack of it of the Jackson Park?

A. The Jackson Park, to me, is in very good taste. I think it is in much newer taste than the taste of the other two theatres, inasmuch as the theatres that were built in the 20's and were designed and decorated in the 20's were lavish, the prosperity was new with the different companies and the different builders had to put everything they had in them, but to me they were gaudy and ginger-bready. Then in the 30's I think everyone will agree that the architects changed this and the new style of theatres, when theatres were remodeled or built, were built in the line of you might say conservative modernism. The Esquire is designed that way and the Rhodes and the Beverly. They are all in, oh, I would say, quite nice, good quiet modernism.

1850 Q. Would your say your theatre is in good taste or better taste, or inferior than the taste of the Maryland?

A. Well, I would say to me it is in much better taste. I don't know how everybody else would feel, but I feel that way definitely.

Q. Did you make any investigation of what kind of cooling system you have in the Jackson Park?

A. Yes. It is a system whereby they use the ventilating system to cool the air and pass the air, blow the air out into the theatre over a system of sprays on water which is cooled by ice, by natural ice.

Q. They don't blow the air right over the cake of ice?

A. Oh, no. No, they blow the air through a spray of ice cold water, you might say.

Q. The ice is only for the purpose of cooling the water?

A. That is right, if it is necessary to cool the water, when the temperature is hot.

Q. Did you make any comparison of the canopies of the Maryland and the Jackson Park Theatre?

A. Yes. I would say offhand they are similar and 1851 I think I could take this occasion to resent Mr. Fuhrer's statement that the canopy of the Jackson Park is made of cheap material, because I challenge that. I don't know that anyone would build a canopy of cheap metal that was for the purpose of standing above people. The fire regulations and the insurance regulations would govern that, and I imagine any canopy in town is built of as cheap metal as is compatible with good sense and stability. The canopy I imagine is designed by the same company as designs all the theatres, the White-Way Sign Service, I think makes a specialty of canopies and I imagine designs them for all theatres. I don't know who designs the other canopies, but I imagine they are designed for all people.

Mr. Adcock: I move that go out what she imagines.

The Court: It may go out.

Mr. Seeley: I move to strike that entire answer.

Mr. McConnell: Q. What would you say as to the taste and general aesthetic appeal of the Maryland and the Jackson Park Theatres?

A. Well, to me the Maryland is far inferior. It looks awfully big, I will admit that,—I am surprised at the 1852 number of seats being the same. It is a spacious looking theatre. Of course it has no back to the seats as the Jackson Park Theatre has, which I think makes the theatre look smaller, and it has a nice ceiling in the auditorium, but I would say that the foyer and lobby are ginger-bready, I

would say that, and maybe loads of people would like them very much, but to me it is old-fashioned. I don't know what they did when they remodeled it, because I could not see any difference than when I was there years and years and years ago, when it was first opened as the Woodlawn, except some decorating.

Q. Could you see any material difference in the projection of the film in the two different theatres?

A. No, I really couldn't. The projection and the sound seemed pretty good there.

Q. How about the approach to the theatres as you come in from the street?

A. Well, it is under the elevated, which has been brought out before. You mean the lobby and the store surroundings?

Q. I mean the general impression of the approach to the theatre itself from the street, as compared with
1853 the Jackson Park.

A. Well, it seems cluttered up. The Jackson Park has a plain—the canopy has these plain rows of red Neon lights, which I think is simple, and the Maryland has all this bunch of orange spots in this dome that are rather detracting. Then there is this vividly flowered carpeting, and with the marble it looks as though it was very expensive when it was first built. I know it was,—but it just seems ginger-bready for this time.

Q. Now, what comparison did you make with the Jeffery Theatre?

A. Well, the Jeffery is a very nice theatre. Of course, it is narrower than the Maryland, but it is more ginger-bready than the Jackson Park, I would say. The seats are heavily—the seats are very nice and they are velvety and have nice springs underneath. I never liked the projection or the sound in the Jeffery. I have always had trouble seeing the picture, the picture never seems to react on my eyes as it should. Some theatres are that way and some are not. It is pretty wide, it is not as deep as the Jackson Park, I
don't think, and it is quite wide. I don't think the
1854 angle is as bad as the Maryland, though, to view the film from.

Q. You think it is a little better theatre than the Maryland?

A. Yes, I like it better than the Maryland.

Q. And how about their canopy and their foyer as compared with the Jackson Park?

A. Well, the foyer—now that they are redecorating it with some bright yellow, I don't know whether that is going to stay there or not, I don't like that, but they probably won't leave it that way; but it has a lot of plaster, rather baroque effects to it which are old-fashioned looking, and it has a lot of expensive looking marble and things like that in the lobby, and the foyer is nicely carpeted and has nice furniture it in. It isn't as simple and plain as the Jackson Park. In other words, I wouldn't say it is as conservative.

Mr. McConnell: You may cross.

Mr. O'Brien: No cross.

Mr. Adcock: No cross.

Mr. McConnell: No cross? You are excused, Mrs. Bigelow.

(Witness excused)

1855 JAMES A. MALOOLY, called as a witness on behalf of the plaintiffs, in rebuttal, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. McConnell.

Q. What is your full name?

A. James A. Malooly. I live at 10025 Hoyne Avenue, Chicago, Illinois.

Q. What is your business or occupation?

A. Real estate, builder, mortgage loans, and appraisal.

Q. How long have you been so engaged?

A. Since 1914 continuously except for about a year and a half when I was in the service.

Q. What familiarity did you have with the district at 67th and Stony Island Avenue?

A. I was born at 6940 Stony Island, forty-seven years ago. I have lived in that district continuously up until 1928, at which time I moved to my present address. I was in the real estate business originally at 67th and Stony Island Avenue, from 1914 up until I went into the service. Upon returning from service I located at 75th and Stony Island for about two years, and from 1921 until 1856 now I have been at 6822 Stony Island.

Q. Have you had any experience—what schooling have you had?

A. I am a graduate of De LaSalle Institute high school

in Chicago. I took the special course of three months in higher mathematics at the University while I was awaiting call to the Officers' Training School for about nine months. I became an officer in the United States Navy Reserve for three and a half years, one and a half years of which was active.

Q. Have you had any experience as an appraiser of real estate?

A. I have had considerable experience.

Q. What experience have you had?

A. Well, from 1920 to 1932 I was the real estate loan appraiser for the Central Manufacturing District Bank, during which time I would say that the appraisals averaged two or three a day. From 1926 to 1932 I was a director and member of the Real Estate Loan Committee of the Woodlawn Trust & Savings Bank. I was appraiser for the Depositors State Bank Bondholders Committee.

1857 Mr. O'Brien: What committee, Mr. Malooly?

A. The Depositors State Bank. That committee appraised a hundred properties.

Mr. McConnell: Q. Does that cover all your experience as an appraiser?

A. Well, I appraised for many individuals and some friends, including the Hartman Furniture Company, Durand Manufacturing Company, American Electric Motor & Repair, J. B. McCahey and Frank Dunn, as trustees of the John J. Dunn Estate, several attorneys, including William A. Rogan and Anderson & Anderson.

I was sent to New York for the trustees of the Central Manufacturing District Bank along about 1928 to make a survey of Camp Merritt, which is on the New Jersey side, directly across from New York, not far from where the new bridge is constructed. I was sent to Omaha, Nebraska by the Adjustment Committee of the Madison-Kedzie Bank to appraise a medical arts and commercial building in that town.

Q. Have you made any comparison of the business district at 67th and Stony Island Avenue and the business district at 63rd and Cottage Grove, with reference

1858 to the location, the desirability of the location for a theatre?

A. I have made such a survey.

Q. Have you an opinion as to whether or not the Jack-

son Park Theatre location is superior or inferior to the Maryland Theatre location?

A. I have such an opinion.

Q. And what is that opinion?

A. That the Jackson Park location is superior to the Maryland's location.

Q. And will you give you reasons for that opinion?

A. Well, the district we commonly call the Southeast District, which includes Woodlawn, Grand Crossing, and the South Shore, takes in the area from 59th and Cottage Grove Avenue to 79th and Cottage Grove, running straight south and east on 79th Street to the lake, north along the lake to a line equal to 59th Street, and straight across 59th.

In the center of that geographical location is the Jackson Park Theatre. In the 63rd Street district you have a solid, well-built area north of 63rd, until you get to the Midway between the block, between 60th and 61st.

1859 The north half of that block is pretty much vacant or controlled by the University of Chicago. Then you have the wide Midway and, directly across from the Midway, the University buildings, that extend practically a whole mile.

To the south, running along 67th Street, you have the Oakwood Cemetery, which is half a mile from the Maryland, and about three-eighths of a mile from the Jackson Park.

The 63rd Street district, particularly from 64th to about 62nd, is a typical rooming house district, which houses transients pretty much. The improvements in through there are old, the improvements north of 63rd are pretty much three-story apartment buildings, and south they predominate, but there are quite a few two-story buildings. In the block just north of the Maryland, on the east side of Drexel, there are two institutions, one of which is an orphanage school and in the block north of 62nd is a home for aged people.

The average age of the improvements in the district adjacent to 63rd Street is probably close to forty years.

1860 The great many taverns that exist or are in operation along 63rd Street to my mind would be a detracting influence for women and children going to and from the movies.

There is a great deal of competition in that district, as

there are eleven or twelve theatres from 63rd and Cottage Grove to 63rd and Stony Island. In the Cottage Grove Avenue block between 63rd and 64th there are about a half dozen taverns and on 63rd from Cottage Grove to Stony Island, there are about thirty-five.

There is a movement of families out of Woodlawn to the southern parts of the South Side, mostly out to Chatham Fields and Brainard.

In the Jackson Park area we have a built-up section solid of three-story buildings. The park to the northeast does not help a theatre location during the winter time, but in the summer time I think it would help.

The number of relief clients in the Woodlawn District was a great deal in excess of the 67th and Stony Island area when the Relief was in operation.

Q. Is there an apartment section to the north of
1861 the Jackson Park Theatre?

A. To the northwest, but not to the northeast. That is where the park is.

In the 67th and Stony Island district we have five hotels. We have the Southmoor at the northwest corner, and the Crest Hotel, the Park Hotel at 67th Place and Stony Island, and the Euclid Hotel, about 6731 Stony Island.

Q. Where is the Jackson Park located geographically with reference to the business districts of the South Side?

A. The entire South Side?

Q. Well, the three business districts that we have spoken of here.

A. I would say it was in the center.

Q. Geographical center?

A. Yes.

Q. Now, what is the situation with reference to the business district in the neighborhood of the Jeffery Theatre?

A. I would say that is about on a par with the Jack
son Park. It is well located, it has got an exceptionally good back-up to the north, and east. The back-up to the
north and west is solidly built with residences, so
1862 that that back-up would not be as profitable to a theatre location as if it were apartment buildings.

To illustrate, in that Jackson Park Highlands district, which starts right back of the Jeffery, it is zoned and restricted for residences only. Within a block of 600 feet

of frontage you have at the most twenty-four families living. That condition does not exist in the north and east, but it does pretty much to the south and east. South and east of 71st and Jeffery is pretty much zoned residential, but the big poll from that neighborhood is from the north and east of 71st and Jeffery.

Q. Did you make any research with reference to the business district or the district around the Tivoli Theatre?

A. I have.

Q. Have you an opinion as to whether or not that district is inferior or superior for a theatre location to that of Jackson Park?

A. I have.

Q. What is that opinion?

A. That the Jackson Park is a superior location.

1869 excavated.

A. Well, particularly on account of the great number of competitors that you have in that immediate neighborhood in the theatre business, and that your improvements to the west of there are practically all small buildings. There are very few apartment buildings south of 63rd and west of Cottage Grove. They are mostly homes and residences, with some few apartment buildings and of an age that probably average close to fifty years. And it also has a honky-tonky atmosphere.

Q. To go back to the Jackson Park for a moment, what are the transportation facilities for the Jackson Park Theatre?

A. Well, they are exceptionally good. There is a transfer corner at 67th Street, with the 67th Street car going east and west; and the Stony Island Avenue cars north and south. There are bus lines, and Stony Island Avenue is a wide street which handles a great deal of automobile traffic, because there is an entrance to the park at that intersection. And the Illinois Central station is about two and a half blocks to the west.

1864 Q. Did you make any research of the district around the Tower Theatre?

A. I have.

Q. Have you an opinion as to whether or not the location of the Tower Theatre is inferior or superior to that of the Jackson Park?

A. I have such an opinion.

Q. What is your opinion?

A. Jackson Park is a superior location.

Q. What is the basis for that opinion?

A. The district immediately back of the Tower Theatre is one of the most congested rooming house districts in the entire Woodlawn area. The block between Stony Island and Harper is the greatest congestion of taverns of any part in the city that I know of, outside of Clark Street. There are about seven or eight of them in there, which cater to sort of a cheap class of people.

Q. Did you make any investigation of the business district or location of the Shore Theatre?

A. I have.

Q. Have you an opinion as to whether or not its location is inferior or superior to that of the Jackson Park Theatre?

1865 A. I have such an opinion.

Q. What is your opinion?

A. The Jackson Park is a superior location.

Q. On what do you base that opinion?

A. The Shore Theatre has competition with another theatre in the neighborhood of 75th and Exchange. There is one at 79th and Exchange, only about three blocks from Lake Michigan. The back-up of the Shore is to the south, with many two and three-story apartment buildings way over to Yates Avenue. When you get west of Yates, north and south of 75th Street, the improvements are 90 per cent residential.

The pulling power of the Shore then, is all practically from the south, from 75th Street to 79th, which is a congested built-up three apartment area. North of 75th Street the improvements are mixed. They would average about 60 per cent residence, bungalows and two-flats, 10 to 15 per cent vacant, and the rest two or three-story apartment buildings.

Q. Did you make any investigation of the district around the Avalon Theatre?

A. I have.

1866 Q. Have you an opinion as to whether or not the location of the Avalon is superior or inferior to that of the Jackson Park?

A. I have an opinion.

Q. What is your opinion?

A. The Jackson Park is a superior location.

Q. What do you base that opinion on?

A. The Avalon Theater is about a block from the busy intersection of 79th and Stony Island at South Chicago Avenue, which is a very busy crossing and very dangerous. The northwest corner has an old factory building, which used to be and probably is now known as the tack factory, and a barrier for people coming from the south is the Lake Shore Railroad, which runs diagonally with South Chicago Avenue.

The improvements north of the Avalon up to about 75th Street is built pretty much with three-story apartment buildings. To the south down South Chicago Avenue, which runs diagonally right back of the Avalon and is about a block distant, are bungalows. South of South Chicago and the barrier of this railroad, that territory is
25 or 30 per cent vacant. The rest are improved
1867 with bungalows and homes. There are no apartments to speak of.

In the district south and west of Stony Island, which is known as Avalon Park, are also homes, a bungalow neighborhood with a few apartment buildings.

The district north and west of the section of 79th and Stony Island runs along South Chicago Avenue for probably about a block west and is an industrial manufacturing neighborhood.

Q. Did I ask you about the Grove Theatre? I don't think I did.

A. No.

Q. Did you make an investigation of the location of the Grove Theatre?

A. I have.

Q. Have you an opinion as to whether the location of the Grove Theatre is inferior or superior to that of the Jackson Park?

A. I have such opinion.

Q. What is that opinion?

A. That the Jackson Park is superior.

Q. On what do you base that opinion?

A. The Grove Theatre is located within what is
1868 commonly known as the Grand Crossing district.

The improvements really are old, especially those east of Cottage Grove. Most of them are frame. There are two or three apartment buildings east of Cottage Grove, but the most are cottages and homes.

The district west of Cottage Grove between 75th and 79th Streets is improved mostly with homes and two-flat buildings. There are hardly any three-story buildings in that area. The same class of improvements exists in the territories north and west of 75th and Cottage Grove, and north and east of 75th and Cottage. The cemetery there also affects that location. It is about five-eighths of a mile to the north.

Q. Now, how long did you say you lived in this Stony Island district?

A. About from 1897 to 1928.

Q. You have lived there all your life?

A. Correct.

Q. Do you know Edward I. Bloom?

A. Very well.

Q. Do you know whether or not he built the Jackson Park Theatre?

A. I do. In fact, I was on the corner when he 1868 excavated.

Q. Would the fact that he did build that theatre in the particular location, have any bearing on your forming an opinion here?

A. It would.

Q. What?

A. For the reason we regard him as one of the shrewdest operators on the south side.

Mr. Adcock: I move that be stricken.

Mr. Goldberg: I move that the answer be stricken.

Mr. Adcock: I move to strike the answer to the preceding question. I don't think it has a thing to do with it.

Mr. McConnell: This is one of the circumstances to determine whether it is—

The Court: You made no objection to his question. I think the previous answer could stand, but the objection should be sustained to the subsequent one.

Mr. McConnell: Q. Was the Jackson Park Theatre the first large theatre that was built in that district?

The Witness: A. There was one built just about that time, probably a year or two before, on 63rd Street, 1870 which is the present location of the Maryland, and was called the Woodlawn. That might not have been quite as large as the Jackson Park, but nearly as big.

Q. That was built after the Jackson Park?

Mr. Adcock: Wait. I object to that.

The Court: What is the objection?

Mr. Adcock: The witness has stated when it was built.

The Witness: About the same time, I don't remember whether it was before or after.

Mr. Adcock: Counsel is attempting to correct an obvious mistake the witness has made.

The Court: What is the question that causes this argument? Read it.

(Record of the two last questions and answers read by reporter.)

The Court: That is the question you objected to?

Mr. Adcock: Yes.

The Court: On what ground, that it is leading?

Mr. Adcock: As leading, and is directly contrary to the statement made before.

The Court: The objection will be sustained on the ground that it is leading.

1871 Mr. McConnell: Q. Well, does the building of the Jackson Park at the time it was built, have any bearing on your opinion as to the relative location of these theatres?

A. It does.

Mr. Adcock: I object to that.

The Court: Objection overruled.

Mr. McConnell: Q. What bearing has it?

The Witness: A. At that time, the builder of that theatre selected locations in eight parts of the city on the South Side. There was no theatre at 79th and Stony or 71st and Jeffery. The district at 67th and Stony Island was the fastest building neighborhood in the city at that time.

The fact that Mr. Bloom selected that site would lead me to believe it was a No. 1 location for the theatre.

Mr. Adcock: I move to strike the entire answer.

The Court: Motion overruled.

Mr. McConnell: Q. Are you receiving any compensation or remuneration from the plaintiffs in this case for your testimony here?

A. No, sir.

Q. Will you tell the jury what your relationship
1872 is to the family, the Bloom family?

A. I am an old friend of the Bloom family. I

have known the plaintiffs since they were children. Mr. Bill Bloom asked me to come down and give my opinion. That is why I am here.

Q. You have no interest in this lawsuit, no financial interest?

A. No.

Mr. McConnell: You may cross-examine.

The Court: Will you take several minutes?

Mr. Goldberg: I will take about twenty minutes, your Honor.

The Court: We will adjourn until 2:00. We did not have a recess this morning, so will suspend now until 2:00.

(Whereupon a recess was taken to 2:00 o'clock p. m. of the same day, Tuesday, March 7, 1944.)

2430 IN THE DISTRICT COURT OF THE UNITED STATES

* * * (Caption—.....) * *

Before Igoe, J., and J.
Tuesday, March 7th, 1944,
2:00 o'clock P. M.

Court met pursuant to noon recess.

Counsel present:

Mr. McConnell,
Mr. Korfist,
Mr. Adcock,
Mr. Goldberg,
Mr. Seeley,
Mr. O'Brien.

Mr. McConnell: Do you want to mark this with the next number, Plaintiffs' Exhibit 173?

(Said document was thereupon marked Plaintiffs' Exhibit 173.)

2431 JAMES A. MALOOLY, having been previously sworn, resumed the stand, was examined further, and testified as follows:

Cross-Examination by Mr. Goldberg.

Q. Mr. Malooly, when were you first asked to testify in this case?

A. Friday.

Q. Since Friday did you make any special studies with reference to the character of the locations of these various theatres?

A. Not extensive, because I was rather familiar with it.

Q. You are relying principally on your own experience in this territory, are you?

A. That is right.

Q. Are you familiar to a considerable extent with the retail stores in the neighborhood of the Jackson Park Theatre?

A. Yes, sir.

Q. What is the best business block in the vicinity of the Jackson Park Theatre?

A. I would say between 67th—one block?

Q. Yes; the best block.

2432 A. You mean where the most retail—

Q. That is right.

A. (Continuing:)—business is done?

Q. That is right, sir.

A. I would say between 67th and 68th.

Q. Which is the best side of that block, the east side or the west side?

A. The east side.

Q. And you are familiar with the stores, are you, on the east side of Stony Island avenue, between 67th and 68th street?

A. I am.

Q. Considering that block, what is the store which is located at the north end of that block?

A. You mean at the corner?

Q. Yes.

A. That is a drug—vacant drug store.

Q. The store is now vacant?

A. That is right.

Q. Do you know for how long it has been vacant?
A. Oh, I would say about a year, maybe fifteen months.
Q. What is the store at the south end of that block, Stony Island Avenue, between 67th and 68th streets,
2433 on the east side of the street?
A. That is a former Martha Washington candy store.
Q. Is it now vacant?
A. Vacant, with a sign, "Closed for the duration".
Q. And what is the store to the north and adjoining the store which you have just described?
A. Father & Son just vacated there a few months ago.
Q. That is also vacant?
A. Yes.
Q. And what is the store adjoining the store which is now vacant and was formerly occupied as a Father & Son store?
A. That is vacant, too. That was a hosiery and ladies ready to wear, if I recall.
Q. It is now vacant, is it?
A. Yes.
Q. What is the store adjoining that store formerly occupied as a hosiery store?
A. That is vacant. It might be used temporarily for income tax service.
Q. But if it is in use, that is only a temporary use?
A. Those four stores are vacant.
Q. So that all four stores at the south end of that
2434 block are vacant, and the store at the north end of the block is vacant?
A. That is correct.
Q. Are there any other stores vacant in that block?
A. There are two on the west side of the street.
Q. I am speaking now of the east side of the street.
A. The east side?
Q. The same side.
A. Yes, there is one at 6741, the Turnquist Hardware store it formerly was.
Q. Are there any other vacant in that one block where the Jackson Park Theatre is located?
A. On the east side of the street?
Q. Yes.
A. No.
Q. Isn't it true that the store at 6755 Stony Island

Avenue, located in that same block between a food mart and a five and ten cent store is also vacant?

A. Between a food mart and—

Q. A five and ten cent store, the store between that having the address of 6755, is also vacant?

A. It might be, I am not certain.

Q. So that you do not have any recollection now as to whether it is vacant or not?

2435 A. Perhaps that is where the income tax man is that I mentioned. There is one store in there that has temporary tenants. I was confused whether it was that one or the one south of it.

Q. Isn't it true that between the four vacant stores at the south end of the block and the one vacant store at the north end of the block there are two other stores vacant on the east side of Stony Island avenue, in that same block?

A. Not that I am certain of.

Q. Are you also familiar with the stores in the neighborhood of the Maryland Theatre?

A. I am.

Q. The Maryland Theatre is located on 63rd street, is it not?

A. That is correct.

Q. And between Maryland and Drexel streets or avenues?

A. Yes.

Q. Now, in the block where the Maryland Theatre is located, on 63rd street,—now, incidentally, the Maryland Theatre is located on the south side of the street, is it not?

A. That is correct.

Q. Now, take that block on the south side of 63rd
2436 street, between Maryland and Drexel, do you know what store occupies the westernmost corner?

A. I believe that is O'Connor & Goldberg.

Q. Is that a large store?

A. No.

Q. Have a large stock of merchandise?

A. I was never in it, but I would assume from the looks of it that it has quite a large stock.

Q. You have seen it?

A. Yes.

Q. In your opinion is there any store in the vicinity of the Jackson Park Theatre, any shoe store, which is comparable with that O'Connor & Goldberg store on 63rd street?

A. No.

Q. Adjoining the O'Connor & Goldberg store to the east there is another store, is there not?

A. Yes.

Q. Do you recall what that store is?

A. I believe that is another shoe store. There is another large one in there. I do not know whether it is right adjoining O'Connor & Goldberg or a store or two away.

Q. Isn't it true that Erie Men's Clothing Company
2437 occupies the store immediately east of O'Connor & Goldberg?

A. I am not certain of that.

Q. Are you acquainted at all with the Erie Men's Clothing Company store?

A. No.

Q. You are not?

A. No.

Q. Can you tell us what the third store is east of the corner, in that same block in which the Maryland Theatre is located?

A. Well, that might be the large shoe store I have in mind, by the name of Makin.

Q. Would that be Maling Brothers Shoe Store?

A. That sounds like it, yes.

Q. Have you seen that shoe store?

A. Yes.

Q. Is it a large store?

A. Yes.

Mr. Adcock: I could not hear the answer.

The Witness: Yes.

Mr. Goldberg: Q. Have you been inside of it?

A. No.

Q. Is there any store in the vicinity of the Jackson Park Theatre, a shoe store in the vicinity of the Jackson
2438 Park Theatre comparable with the Maling Brothers store?

A. I don't believe so.

Q. Do you recall the name of the store east of the Maling Brothers shoe store?

A. No, I do not.

Q. If I mention to you the Better Value Shop, a women's wear shop, does that sound familiar to you?

A. Well, the name don't, but I believe there is a women's, ladies ready to wear shop there, apparel shop.

Q. Now, the next store east of that women's apparel shop is occupied by the Jack and Jill Kiddie Shop, is it not, if you remember?

A. I don't know.

Q. We have now discussed the stores west of the Maryland Theatre, and passing on east of the Maryland Theatre, in that same block, do you recall what store is east of the Maryland Theatre in the block in which the Maryland Theatre is located?

A. No, I don't.

Mr. Adcock: I could not hear.

The Witness: No.

Mr. Goldberg: Q. If I mentioned the name Mary-
2439 land Millinery Company, does that refresh your recollection with respect to the name of the store that occupies the store east of the Maryland Theatre?

A. No, I don't recognize that.

Q. That name is not familiar to you?

A. No.

Q. Do you remember who occupies the next store?

A. No, I don't.

Q. The Hi-lo Food Mart, do you remember that store being in that block?

A. No.

Mr. Adcock: I could not hear.

Mr. Goldberg: He said "No".

Mr. Adcock: All right.

The Witness: In fact, the only stores that I recall there are the Ladies Ready to Wear and the two shoe stores.

Mr. Goldberg: Q. You do not recall any of the other stores in the block where the Maryland Theatre is located?

A. No.

Q. Isn't it a fact that there is not one single vacant store located in that block?

2440 A. I believe that is correct.

Q. Mr. Malooly, you said, I believe, in connection with your direct examination, that you did know Mr. E. I. Bloom; he is living now, is he not?

A. That is correct.

Mr. Goldberg: I think that is all.

The Court: Do you gentlemen have any cross-examination?

Mr. Seeley: No, I have nothing.

The Court: Mr. O'Brien, have you some questions?

Mr. O'Brien: Yes.

2441 *Cross-Examination by Mr. O'Brien*

Q. As I understood you, Mr. Malooly, you think that as to locations, the Jeffery Theatre and Jackson Park are about on par, is that correct?

A. That is correct.

Q. And you also think that the Jeffery Theatre draws many of its patrons from the district immediately north, or north and west, that is, from Jeffery west towards Stony Island, and north of 71st street?

A. Yes, but I think if draws more from north and east.

Q. More from north and east?

A. Because of the type of buildings that are located in those areas.

Q. And it is true, isn't it, that the Jackson Park also draws many folks from the same area?

A. That is true.

Q. I would suppose that in your opinion you would say that both of those houses are in fairly close competition?

A. I would say that.

Q. For patronage, I mean. Then, as to the general nature of the buildings on 71st street, as compared with

2442 those on Stony Island avenue, in the block which you mentioned, would you say that they are newer structures on 71st?

A. Yes, the district is considerably younger.

Q. Yes. As a matter of fact, back in 1916, 1917, a good part of that territory east of Stony Island avenue was practically swampland, wasn't it?

A. Well, not until you got east of Jeffery.

Q. That is true, east of Jeffery?

A. But between Stony Island and Jeffery it was improved streets and—

Q. The street car line on 67th street did not always run as far as the Lake, did it?

A. No, sir. It stopped at Stony Island.

Q. And as the neighborhood got built up, the cars went on so that at 67th and the Lake is the present terminal of that car line, with a little hot-dog stand out on the lot there?

A. Yes.

Q. And all along the Lake, from 67th street, from that car terminal south to 71st street, is the South Shore Country Club?

A. East of South Shore Drive?

Q. Yes.

2443 A. That is correct.

That is a very valuable piece of ground, is it not?

A. Correct.

Q. And immediately west of the South Shore Country Club, to the full length of the Club property, are very fine apartments, are there not?

A. There are.

Q. The rental value of those apartments is much higher than it is as you go west, isn't that true?

A. Yes, they are newer and a little more modern.

Q. Well, now, many of them along the Drive there command very high rent, don't they?

A. Yes.

Q. About how high? What is the range of rent there?

A. Well, some of them are as high as $20, $25 a room.

Q. How much a month?

A. That would depend on the size of the apartment.

Q. Well, say about six rooms?

A. Well, I know six rooms and three baths at 6939 Crandon would run from $135 to $145.

Q. How do they run on South Shore Drive?

2444 A. I imagine they would be a little bit higher on South Shore Drive.

Q. I imagine. And then, as you move around and go west on 71st street, you also have these new buildings; don't you, all the way to Jeffery, with some exceptions?

A. They are not all new.

Q. Not all, but most of them?

A. Well, a great many of those buildings between 70th and 71st, between Chappell and Clyde—

Q. I mean on 71st street.

A. Oh, on 71st street.

Q. Commercial Buildings?

A. On the north side they are a little older. There are some new ones on the south side. When I talk about "new" I speak of buildings built between 1920 and 1929.

Q. I see. Now, take that big building on the corner of 71st and South Shore Drive; when was that built?

A. I imagine that was built about 1925 or '26.

Q. It was not there in 1916 and '17?

A. No, sir.

Q. And all along there are very fine shops, are
2445 there not?

A. On the north side of the street, yes, but not on the south.

Q. On the south side you have that big Martin's place, don't you?

A. That is true.

Q. What is the front foot value, in your opinion of the property along 71st street that we have been talking about, commercial property, on the north side?

A. Well, it varies. Which block do you have in mind, where the Jeffery Theatre is?

Q. Let us take the first one from the Drive north over to the next street?

A. That is the best block on the street. I would put that at about $800 a front foot.

Q. And how does that compare with the value of any of the property in the block on Stony Island avenue?

A. Well, that is about $150 more than the block on Stony between 67th and 68th.

Q. What would be the value per front foot of the corner stores or property at 71st and Jeffery?

A. The values of the corner store?

Q. The value per front foot of the property at the corners there at 71st and Jeffery?

A. The corner frontage you speak of now?

2446 Yes.

A. I would put the corners there about $750 to $800.

Q. And how does that compare with the value at the corners per foot at 67th and Stony?

A. I would say it would be about the same.

Q. Then I suppose the rentals should be about the same, should they not?

A. Yes, they should.

Q. Are they, if you know?

A. I don't know what the rentals of the two west corners at 67th and Stony bring in. I don't know the rentals at 71st and Jeffery.

Q. You don't. That is all right. Now, you said, again, as to locations, that the Jackson Park site was superior to that on which the Shore Theatre and the Grove Theatre are situated.

Which would you say was the better location, that of the Shore or the Grove?

A. I would prefer the Shore.

Q. Now, I suppose when you told the jury your opinion as to better locations for the purpose of a Theatre, you mean, or meant by that that the better location, the houses being anywhere near equal otherwise, would attract more patrons to the theatre, did you not?

2447 A. What was the question?

Mr. O'Brien: Read it.

(Question read).

A. All things being equal, yes, sir.

Mr. O'Brien: Q. Well, do you think that in the case of the Jackson Park and the Shore that other things besides location are reasonably equal?

A. Well, I had in mind the type of pictures.

Q. I see.

A. When I said "all things being equal."

Q. And aside from that, you think the other things are reasonably equal?

A. Between the Shore and the Jackson Park?

Q. Yes.

A. No; between the Jeffery and the Jackson Park.

Q. I am speaking of the Shore.

A. The Shore and the Jackson Park, no. I think the Jackson Park would be superior.

Q. In which way?

A. It would be a better location to attract patrons.

Q. And then as I understand you, if they were playing the same pictures at about the same time, the Jackson

2448 Park ought to attract more people?

A. That would be my opinion.

Q. When you expressed that opinion, you did not know, did you, that the Shore Theatre and the Jackson Park Theatre do play the same pictures at the same time?

A. I didn't know that.

Q. And you did not know, did you, that the attendance of the Shore Theatre for the year 1936 was 696,000 people as against the Jackson Park's 566,000, did you?

A. I was not acquainted with those facts.

Q. Or jumping down to a more recent year, that in the year 1942 the Shore's attendance, playing in the same position as the Jackson Park, the same pictures, was 443,000 against the Jackson Park's 361,000; you did not know that?

A. I did not know that.

Mr. O'Brien: That is all.

Mr. Goldberg: I have one more question, Mr. McConnell, if I may

Mr. McConnell: Go ahead.

2449 *Further Cross-Examination by Mr. Goldberg.*

Q. Is there a bank located in the vicinity of the Jackson Park Theatre, at 67th and Stony Island avenue?

A. No.

Q. You say "No"?

A. No, there isn't.

Q. What is the closest place for the business institutions located at 67th and Stony Island avenue to do their banking?

A. Midway between the Southeast Bank and the South Shore, both the same distance.

Q. The first bank you mentioned is the Southeast Bank?

A. That is right.

Q. Where is that located?

A. 63rd and Woodlawn.

Q. How far is that from the Maryland Theatre?

A. Just a little short of half a mile; about three-eighths of a mile.

Q. Where is the other bank that you mentioned?

A. 71st and Jeffery.

Q. How far is that from the Jeffery Theatre?

A. Right around the corner.

Mr. Goldberg: That is all.

2450 *Redirect Examination by Mr. McConnell.*

Q. Mr. Malooly, you were asked about a comparison between the—is it the Grove Theatre or Shore?

Mr. Adcock: Shore.

Mr. McConnell: Q. (Continuing.) —Shore Theatre, playing in the same week. Would you think that the fact that the Maryland Theatre and the Jeffery Theatre played in advance of the Jackson Park would have some bearing on the admission price, or the admissions received by the Jackson Park and the Shore?

A. Considerable.

Mr. Adcock: I object to that, your Honor.

The Court: What is the objection?

Mr. Adcock: On the ground that he is not qualified as a person who has anything to do with the operation of the theatres.

The Court: Mr. O'Brien used him as an expert.

Mr. Adcock: No.

The Court: I think Mr. McConnell can use him as one. The objection is overruled.

Mr. McConnell: Q. What bearing would you give that?

2451 A. Well, the Jackson Park, it would be right in between these two other houses that would be running those pictures.

Q. And when you said you thought the others would draw the same amount in the same playing position, or you thought the Jackson Park would draw more, you were assuming that they had equal competitive factors, were you not?

A. That is correct.

Q. Now, the fact that there are vacant stores in these different business districts, was that taken into consideration by you as to the relative merits of the locations?

A. It was, particularly that northeast corner of 68th street and Stony Island avenue.

Q. What is the situation there with reference to vacancies?

A. Well, that building is owned by the Massachusetts Mutual Life Insurance Company. They have always been very fussy about the type of tenant that they would take in there. They have turned down repeatedly good applications from merchants, like delicatessens, bottle liquor houses, radios—a radio store did attempt to get in

2452 there. They insisted on chains, and they did have two chains in there, the Martha Washington Candy on the corner there and Father & Son adjoining, and this lady's hosiery shop, I believe, was also a chain.

Their position was that they would rather carry those stores vacant than take a mediocre type of tenant, and if there was a different type of landlord in that property, I do not think we would have four vacant stores there.

Mr. McConnell: That is all.

2453 *Recross Examination by Mr. Goldberg.*

Q. Mr. Malooly, the owners of those buildings have been unable to get chain stores as tenants for those vacant stores, is that right?

A. The owners of which building?

Q. The buildings on the east side of Stony Island avenue, between 67th and 68th Streets, have been unable to get chain store tenants?

A. Well, they had two in there.

Q. For the vacant stores presently existing there?

A. They did have two in there, but they vacated just within the last few months.

Q. They have not been able to get any other chains?

A. No.

Q. To occupy those stores?

A. No.

Q. Now, the stores which you are familiar with in the Maryland Theatre Building block are those stores chain stores?

A. Well, I believe you could call O'Connor & Goldberg a chain, because they have other stores.

Q. How about the other?

A. The other shoe store I am not acquainted with
2454 as to whether that is a chain.

Q. You don't know whether Maling Brothers is a chain or not?

A. No, I don't.

Mr. Goldberg: That is all.

The Court: Are you all through with Mr. Malooly?

Mr. McConnell: That is all, Mr. Malooly.

(Witness excused.)

2455 Mr. McConnell: I want to offer in evidence Plaintiffs' Exhibit 173, a compilation of Loop gross receipts for the years 1937 through 1942, the data having been compiled and furnished by Mr. Adcock.

The Court: If there is no objection, it may be admitted.

(Said document, so offered, was received in evidence as PLAINTIFFS' EXHIBIT 173, and is in words and figures as follows, to-wit:)

2456 Mr. McConnell: Your Honor, I don't know how broad your ruling was this morning on that affidavit. I want to bring this to your attention because I want to

be fair about that affidavit. I cross-examined one of them—

Mr. Seeley: Is this the time or place to bring that up?

Mr. Adcock: Wait a minute.

The Court: No. If you want to discuss that, the jury may retire for a few minutes.

Mr. Adcock: Well, just a minute. I think there is one Exhibit that we were going to substitute. Have you got 155?

Mr. Goldberg: Why don't you go ahead with that when they come back?

2457 (And thereupon the following proceedings were had out of the presence and hearing of the jury:)

Mr. McConnell: Your Honor will recall I cross-examined, I think, Mr. Shirley on the Coston affidavit, and he made certain answers. I cross-examined him in the way we discussed here, by reading to him portions of the affidavit, and getting his answers.

Now, the thing that concerns me is whether or not your Honor's ruling was to the effect, as I understood it, that the affidavit as part of the plaintiffs' original case, whether or not I could use that on rebuttal. If it is proper for me to do so, I would like to do so. In any event I don't want to be put in the position of counsel saying, "Well, you did not come forward with this affidavit. Now, after you have cross-examined the witness—"

Mr. Seeley: Did you say that was my witness?

Mr. McConnell: It was Mr. Shirley, yes.

Mr. Seeley: Well, now just a minute. I assure you I will not come forward with any such statement, if that helps matters out any.

Mr. McConnell: I just want to be fair about it, that is all.

I do not want to—

2458 The Court: Do you take Mr. Seeley's word for it?

Mr. McConnell: Yes.

The Court: I think the question put to Mr. Shirley, upon which you based your cross-examining question, is quite different than the questions put by Mr. O'Brien to Mr. Coston, upon which you attempted to base cross-examination. But you have that assurance from Mr. Seeley, so that answers your inquiry.

Mr. McConnell: Yes, your Honor. I do not want to go into that issue, except to be fair about it.

The Court: Well, does that close the evidence on both sides, now?

Mr. McConnell: That is the plaintiffs' case.

Mr. Adcock: Don't we have to close before the jury?

The Court: We can make inquiry while they are out. We can tell them the secret when they come in.

Mr. Adcock: Yes.

There is one Exhibit when they come in.

Mr. Adcock: Yes.

There is one Exhibit, Plaintiffs' Exhibit, which should be substituted for another. There were some corrections. That is agreed to, I think, by Mr. McConnell.

The Court: Well, that is just a substitution of one
2459 paper for another?

Mr. Adcock: That is right.

Mr. McConnell: That is all right, if the Court please.

Mr. Adcock: Will you bring it in and we will substitute it?

The Court: I take it you folks will have some motions to make here, then we will want to discuss these instructions.

Mr. Seeley: That is right.

The Court: So I imagine we will spend the rest of the afternoon doing that. We might as well call the jury in and let them go until tomorrow morning.

Do you have that Exhibit you want to put in while the jury is here?

Mr. Adcock: It won't be necessary, I think, your Honor. We can substitute a copy.

2460 (And thereupon the following proceedings were had in the presence and hearing of the jury:)

The Court: At this time we are going to have some discussions at which your presence will not be required, so the jury may be excused until tomorrow morning at 10 o'clock.

(And thereupon the following proceedings were had out of the presence and hearing of the jury:)

Mr. McConnell: Do you want me to reoffer it?

Mr. Adcock: No, just re-mark it. It is 155. We understand it is substituted for the other document.

Mr. McConnell: Mark that Plaintiffs' Exhibit 155.

I am now offering this document as Plaintiffs' Exhibit 155, in substitution of the document previously offered in evidence in this case.

The Court: All right.

Mr. McConnell: With the same Exhibit number. That takes care of that.

Mr. Adcock: You keep this. It is yours.

2461 Mr. O'Brien: At this time, your Honor, I want to renew, on behalf of my clients, the motion for a directed verdict at the close of all of the evidence. It is in different form, so I must—

The Court: All right.

2462 The Court: Have the other defendants motions, too?

Mr. Seeley: I would like the privilege to bring my written motion in tomorrow morning, if your Honor please. I make the motion orally now, if I may, please.

2463 Mr. Adcock: If your Honor please, I have one here.

2464 The Court: I presume in these motions you repeat the grounds upon which you made your motions at the close of the plaintiffs' case, in general.

Mr. O'Brien: I do.

Mr. Seeley: That is right. It is my intention.

The Court: And, Mr. Seeley, you are making yours now, and you will bring it in tomorrow.

Mr. Seeley: Yes, I will.

Mr. Adcock: I should have made a motion before that, which I intended to make.

I want to move to strike all the evidence relating to damages, and particularly Plaintiff's Exhibits 47, 48 and 49.

The Court: What are they?

Mr. Adcock: As to the damage.

The Court: Statements concerning the Maryland Theatre?

Mr. Adcock: The Maryland Theatre, on the theory of damages, both.

The Court: The motion will be overruled.

Then the three motions that each counsel has made for their respective clients will be overruled.

2465 Mr. Seeley: I think another motion should be made to have this record satisfactory.

The Court: Whatever you think should be made, now is the time to make it.

Mr. Seeley: All right.

Mr. O'Brien: First, I would like to join on behalf of my clients in the motion Mr. Adcock just made, which you have overruled, which your Honor overruled.

The Court: Yes, sir. Let it be understood.

Mr. Seeley: I would like to join, too.

The Court: (Continuing.) That all three join in the motion which Mr. Adcock made. Mr. McConnell resists that motion, I take it?

Mr. McConnell: Yes, your Honor.

Mr. Seeley: This being a conspiracy case, and all of the evidence having come in on the theory that it is not competent as to any other defendant unless it is connected up, I now wish to make a motion on behalf of each of my clients to strike all evidence as to acts and statements of other defendants, then each of them, on the ground there has been no showing of a combination or conspiracy sufficient to make such acts and declarations of others binding on my clients, respectively.

2466 The Court: Each of you gentlemen want to make the same motion?

Mr. Adcock: I do, your Honor, for Balaban & Katz and Paramount.

Mr. O'Brien: I make a motion separately on behalf of each of my clients.

The Court: It is understood that each counsel makes the same motion on behalf of their individual clients, and those motions will be overruled.

Mr. O'Brien: While we are on that point, and for our purposes here, I think there will have to be an appropriate instruction it. We can take that up when we come to the instructions.

Mr. Adcock: I want to renew the motion, which I also forgot, that counsel for the plaintiffs be required to elect on which theory of measure of damages he relies at this time.

The Court: Is your position the same as it was?

Mr. McConnell: Exactly, your Honor.

The Court: That you have a right to go to the jury on either theory?

Mr. McConnell: Yes, your Honor.

Mr. Adcock: I don't see how that can be sustained.

2467 The basis is the same acts of the defendants. I do not see how there can be any different state of facts or difference applied to one theory than the other. Now, I fail to see that.

The Court: You have submitted an instruction here along that line, have you not?

Mr. Adcock: Only on—

The Court: On either line?

Mr. Adcock: I have submitted one on the theory that your Honor might overrule my motion, deny my motion, and also an instruction on the theory that you might sustain the motion.

The Court: Well, the ruling will be the same on that motion.

Mr. O'Brien: We join in that motion, too, of course.

The Court: Yes, sir.

2468 The Court: Now, let us see where we start here. Suppose we take up Mr. McConnell's instructions first. You folks have them there, do you, and they are numbered?

Mr. O'Brien: I think so, your Honor. I have.

The Court: You handed me some number 1 to 21.

Mr. O'Brien: I seem to have some here that are marked "M".

The Court: "M", that is the way mine are marked, "M".

Mr. McConnell: I think that is "McConnell". I don't know any other reason for the "M".

The Court: "M" stands for "Mc".

Mr. McConnell: Yes.

Mr. O'Brien: These do not bear any numbers. There are three of them.

The Court: Those are three extras. If this case keeps on going, we will get a lot of extra ones in here. Every time we take a recess we get some more of them.

You handed up three or four. You handed yours to me, Mr. Adcock.

Mr. Adcock: Yes, your Honor.

The Court: And then Mr. McConnell's associate 2469 handed in three more yesterday afternoon some time.

Mr. Adcock: I find them now.

Mr. McConnell: They were the last three.

Mr. Adcock: Yes, I find them.

The Court: Yes, sir.

Mr. Seeley: Your Honor, may I suggest something which may save time for the Court and all counsel?

As I understand the rules, they require that before the jury retires, each side make specific exceptions to the charge of the jury.

Now, we are now going to engage in a discussion here, in the course of which we will all state our views.

It seems to me it would be a redundancy to have to go all through that all over again just before the jury retires; and if it is agreeable with Mr. McConnell I think we might have an agreement that those grounds of objection which we respectively state during the present discussion may be assigned without further particularization as grounds of whatever exceptions we take before the jury retires. Will that be agreeable?

Mr. McConnell: That is perfectly agreeable to me.

The Court: That is the agreement usually made,
2470 and it does save a whole lot of time.

Mr. Seeley: Yes.

2471 The Court: Now, are we ready to start?

Now, Mr. McConnell submits the first instruction.

(Thereupon the plaintiffs tendered instruction No. 1, in words and figures as follows:)

The Court instructs the jury that if you find that there was a fixing of minimum admission prices, then the fact that there were business reasons which made such fixing of admission prices desirable to those defendants which you find to have participated therein, if you so find, or the fact that for other reasons the arrangements might be deemed to have desirable consequences, would be no legal justification for such fixing of prices.

And if you further find that the socalled Chicago system of release is an inseparable part of a price-fixing scheme between the defendants or some of them, then the contracts and clearance schedules incorporating the same therein are invalid and illegal and the plaintiffs are entitled to recover for any damages proximately caused thereby.

2472 The Court: What objections have you folks to that?

Mr. Seeley: Well, I first have an objection to it—

Mr. O'Brien: Is that No. 1 instruction?

The Court: No. 1, yes.

Mr. Seeley: (Continuing:)—on the ground it begins "The Court instructs the jury that if you find there was a fixing of minimum admission prices",—I believe that it is only a conspiracy to fix prices which the law condemns, and the instruction should therefore refer specifically to a conspiracy to fix prices.

Mr. McConnell: I have no objection to that, changing

that, "that there was a conspiracy to fix minimum admission prices".

Mr. Seeley: Then I object to the second paragraph of the instruction in its entirety, because what Mr. McConnell attempts to do here, and what he attempts to do in numerous other instructions, is to tie up what he claims is a conspiracy to fix prices, with some damage, alleged damage to the plaintiffs, although it is perfectly clear from the evidence that if there was price fixing, the plaintiffs have not suffered any damage because of it, by reason of having always charged more than the prices which Mr. Mc-
2473 Connell alleges were fixed.

Now, how does he attempt to do that? He attempts to do it by, first, saying that the jury may find that there was a price fixing conspiracy, and then that as an inseparable part of it, or as an integral part of it, as he says somewhere else, runs and clearances were set up; and then that if the runs and clearances damaged him, why, then he claims to be damaged by the whole thing.

Now, it is perfectly clear that there may be embraced within a single scheme or conspiracy, objects, some of which may be lawful, and some of which may be unlawful; and it seems perfectly evident to me that by this device the plaintiffs cannot attempt to bring a part of the conspiracy, which in itself may be perfectly lawful, within the part of it which might be unlawful, but which did not affect them in any way.

I object to this and to all other instructions by means of which the plaintiffs here attempt to instruct the jury or cause the jury to believe that they have been injured by any price fixing agreement; and it is perfectly clear
2474 that if there was such an agreement, the plaintiffs were not in any way affected thereby.

Oh, and I also object to this and all other instructions embodying the charge of price fixing agreement, for the reason that it is outside the issues in this case; because if your Honor will read the plaintiffs' complaint you will find that the charge is that there was a conspiracy among the defendants to set up a system of release by means of which the plaintiffs' theatre was to be compelled to play not earlier than the tenth week after the Loop first run, or the first general week of release.

This entire idea of a conspiracy to fix admission prices is an importation into the case which has taken place during the trial, and utterly outside the issues made.

Mr. McConnell: If the Court please—

The Court: Now, wait. Let us see. Are those all the objections to this instruction?

Mr. Adcock: I haven't any more. I wish to join in those objections.

The Court: Mr. O'Brien? I just want you to
2475 answer once.

Mr. O'Brien: I would like to adopt the ones Mr. Seely made, and to add this:

The conclusion of the instruction is that the plaintiffs are entitled to recover for any damages caused thereby, meaning, I suppose, the combination of a release system and a price fixing conspiracy, but there is left out the essential element that before any damage can be recovered, the jury must further find from the evidence that a certain injury—the jury must find to a certainty that the plaintiffs or their property were injured by the matters complained of, before the instruction can go on to say that there can be a recovery of any damages whatsoever.

The Court: Well, the only damage he seeks is damages proximately caused, for the reasons set forth in his instruction. All right. What answer do you have to make to these objections, Mr. McConnell?

Mr. McConnell: If the Court please, there is nothing new to this. We argued this on the motion for a directed verdict.

When I started this case, in my opening statement,
2476 I referred to this conspiracy which fixed prices, and fixed runs and clearances, and all the rest of it.

Now, throughout this case there has not been a moment in it, from beginning to end, when that has not been the central and controlling theme of the entire case, that it is all tied in together as an integral part.

Now, the witnesses have admitted it from the witness stand. They say that is an inseparable part. I asked some of them that very question, whether it was inseparable. The clearance schedules put it in as part of it. The whole thing is tied in together.

Now, that case which I cited to your Honor on the motion for a directed verdict, the Masonite case, a very recent case, decided I think in 1943, which holds that any sort of price fixing scheme or conspiracy is illegal *per se*.

The Court: Well, there is not any dispute about that, is there? Do you folks dispute that?

Mr. Seeley: No.

The Court: That a price fixing agreement so far as products moving in interstate commerce is concerned, 2477 is illegal?

Mr. O'Brien: Well, it all depends what he means by a price fixing scheme.

The Court: What do you think? Price fixing agreement, let us call it an agreement?

Mr. Seeley: Why, certainly, there is a lot of difference.

The Court: There is what?

Mr. O'Brien: When he cited the Masonite case, the next morning I showed him in my reply argument that the holding in that case had no application to what was involved here.

The Court: Oh, but that is not the question. Isn't it to be admitted here that any agreement between two or more persons that had to do with fixing prices upon products that move in interstate commerce is, *per se*, illegal?

Mr. O'Brien: I would not concede that before the terms are made plainly definite.

Mr. Seeley: I think we have to make this distinction, your Honor. Obviously one who owns property may sell it.

The Court: I understand that.

Mr. Seeley: And the contract between the buyer 2478 and seller, although it fixes a price, is of course not illegal.

The Court: That is between individuals.

Mr. Seeley: That is right.

The Court: I am talking about between two or more persons.

Mr. Seeley: Between competitors.

Mr. O'Brien: Oh, I would concede that.

Mr. Seeley: I think if it is so limited, there is no doubt about it.

The Court: I do not think there is any doubt about it.

Mr. McConnell: Then, if it is a part of a conspiracy, my point is it becomes an illegal conspiracy, and wherever we are damaged, wherever it impinges upon our business, we are damaged.

The Court: As I understand Mr. McConnell's position, it is this: That he charges a conspiracy between competitors which has to do with arranging for these runs, clearances, and so forth, and the whole thing is anchored upon the proposition that it is engineered and controlled and run by the fact that the prices are fixed.

Mr. McConnell: Exactly.

The Court: That is the way I understand this case.

Mr. McConnell: I have tried it on that theory from the beginning to end.

The Court: I know you incredulously looked at me at times when I said he had a theory. You apparently do not concede he has any right to have a theory, but I understand that is his theory of this lawsuit, as far as he is concerned.

Mr. Seeley: I understand that is his theory. Our only point is that we insist that as a private party, if his theory is price fixing, then he must show damage from the price fixing; and he has not done it, but his only claimed damage is from different things, namely, run and double featuring, and the mere fact that several things, as he claims according to his theory, are interrelated parts of something, does not relieve him as far as I understand the law, from the obligation of showing that the particular thing which damaged him was an unlawful conspiracy.

Mr. McConnell: Conspiracy, yes, an unlawful conspiracy. If it damages us anywhere, impinges upon our business, that is all we have to show. There is no case that holds otherwise.

The Court: Well, you may save your point on the first instruction. I am going to give that.

The Court: Now, pass to the second.

(Thereupon the plaintiffs tendered Instruction No. 2, in words and figures as follows:)

The Court instructs the jury that it is not necessary in the proof of a conspiracy to restrain commerce that the plaintiffs show by direct testimony that the defendants entered into any agreement with each other to impose restriction upon subsequent run exhibitors but that they are entitled to rely on inferences drawn from the course of conduct of the alleged conspirators and that when there is unanimity of action showing an initial desire to seek or compel a certain result there may be sufficient evidence of the agreement, unless there is persuasive evidence to the contrary, and you are further instructed that similarity to be regarded as coincidence.

Mr. Seeley: On the second, your Honor, I have an objection first where it says:

"The Court instructs the jury that it is not necessary

in the proof of a conspiracy, to restrain commerce, that the plaintiffs show by direct testimony that the defendants entered into any agreement with each other."

Let's see. But they are entitled to rely on inferences —that is all right. I can not read my own note on that.

The Court: I think this is taken out of one of the cases that I read some place. It is pretty nearly the language.

Mr. Seeley: Wait a minute.

Mr. McConnell: It is.

Mr. Seeley: Yes, but the courts have often pointed out that you can give some very erroneous instructions by taking a particular paragraph out of an Opinion without taking into consideration the holding in the case.

The Court: Which was the point you thought was objectionable here?

Mr. Seeley: Just a moment, if you please, and I will have it.

2483 Oh, well, down here where it says, "There may be sufficient evidence of the agreement unless there is persuasive evidence to the contrary."

Now, the burden of proof in this case is on the plaintiffs, and I do not think, with any justice, this jury can be given any instruction which on one hand permits them to draw an inference from something or other, and then put on the defendants the burden of putting in some persuasive proof to the contrary.

The Court: Well, suppose they strike out that phrase or clause; then what objection do you have?

Mr. Seeley: Well, I think it should be re-worded at least to simply state that—oh, I remember now what my other point was.

It says here "When there is unanimity of action showing an initial desire to seek or compel a certain result."

Now, then, that is broad enough to cover the case of several people acting unanimously to achieve perfectly independent and individual results. I think it ought to be limited to unanimity of action to carry out some common plan or design.

The Court: Well, he calls it a certain result.

2484 Mr. Seeley: Yes. Some results are perfectly lawful, and others may not be.

Mr. McConnell: Well, I do not have any objection to "common plan or design". I think that is stronger lan-

guage against Mr. Seeley than what I have got. This phrase, "unless there is persuasive evidence to the contrary" is to protect him.

Mr. Seeley: Instead of saying there may be sufficient evidence of the agreement, I think it should simply state—No, I guess it is as good as you can make it. I will take that back.

Mr. O'Brien: Well, I think it is subject to the further objection, that the jury is not told that where it might reasonably draw another inference from the same state of facts. Then—let's see. It is worded so I cannot pick out the subject. I mean where the facts are susceptible to two reasonable—

The Court: I think there are other instructions. I think either Mr. Seeley has handed me one of them—

Mr. McConnell: Lots of them.

The Court: Mr. Adcock has handed me one—susceptible of two inferences. That is, one that is good and the other that is evil. You must look to the good and not to the evil.

2485 I think Mr. Seeley has one of those.

Mr. Seeley: Yes, I have.

The Court: I think Mr. McConnell has one of them.

Mr. McConnell: I think so, too.

The Court: Why not strike that clause, "Unless there is persuasive evidence to the contrary"?

Mr. McConnell: All right.

Mr. O'Brien: That clause—it is hard to get the structure of the sentence. One time I read it, I think that is a qualification that favors us, except that—

Mr. McConnell: That is what it was intended to do.

Mr. O'Brien: Except that it is not good enough because he has got this "persuasive" business in there.

The Court: You think any time he uses the word "persuasion" it means no good for your side?

Mr. O'Brien: I would like to have it like a Labor Board case, "any evidence," "unless there is any evidence to the contrary."

Mr. McConnell: That would certainly put the burden of proof on me, that way.

Mr. O'Brien: Well, it would be the extreme of what you are trying to do to us.

The Court: Well, strike that out, and we will put
2486 in instead of "a certain result", we will put in "common plan or design."

Mr. O'Brien: Then there has got to be, "unless there is evidence to the contrary". Why the "persuasive" to make our burden a little more heavy? If it is not persuasive, the jury will disregard it. That emphasizes it too much.

The Court: What do you say, Mr. Seeley?

Mr. O'Brien: Leave out "persuasive".

The Court: Do you still want to insist on your criticism of that phrase, or not?

Mr. Seeley: Well, on the word "persuasive", yes. I certainly think that ought to go out because I think that goes to the burden of proof.

Mr. McConnell: Well, it all has to go out then, it would seem to me.

The Court: Why would it all have to go out if you just let in just "no evidence to the contrary"?

Mr. McConnell: Any evidence, any piece of evidence then would make it everything that was shown in the case, under that.

Mr. O'Brien: Oh, I don't think so.

Mr. McConnell: I think if you just take the clause
2487 out, together with the other instructions—

The Court: We will take it out. That other instruction is in here a couple of times.

Mr. O'Brien: That makes the instruction more objectionable, then, if you take it out. That clause is in there for our protection.

Mr. McConnell: But they have got other instructions, if the Court please, which show the burden of proof, and all of that.

Mr. O'Brien: I want, before I forget it, to make these general objections to the form and substance of all of Mr. McConnell's instructions. I mean, they are too abstract, they are not—

The Court: You must do more than that. You have to point out your objections as we go along here. It is not enough for you to say, "I object to them generally."

Mr. O'Brien: I understand. All right. I will take them up as we go along, if it has to be repeated.

I object to the instruction because it is stated in the abstract, it violates the rules relating to instructions in that
it does not take the matter step by step and condition
2488 these things upon what the jury finds from all of the evidence; in short, it does not purport to be in any

way tied into either the evidence or what detailed and essential findings on the evidence have to be, to sustain this legal conclusion.

The Court: Now, can we reach any agreement?

Mr. Adcock: May the record here be that I join in the objection made to that by Mr. Seeley and by Mr. O'Brien, without restating it, your Honor.

The Court: Yes, sir. Can we reach any agreement here on that clause? Shall we take it in or leave it out, which?

Mr. O'Brien thinks it ought to go in; Mr. Seeley, you think it should come out?

Mr. Seeley: Of course, I think the answer to that is that probably the whole first sentence ought to end after "drawn from the course of conduct of the alleged conspirators."

2489 That is the end of one thought.

Then everything from there on I think we ought to try to rephrase.

Mr. McConnell: This instruction was taken right out of *Johnson* v. *Yost Lumber Company*, 117 Fed. 2d, 53.

Here is what the Court said:

"Where there is unanimity of action showing an initial desire or threat to seek or compel a certain result, there is sufficient evidence of the agreement, unless there is persuasive evidence to the contrary. Similarity of action by interested parties is not necessarily to be regarded as coincidence."

Mr. O'Brien: Well, you don't mean that the Court approved an instruction in this form?

Mr. McConnell: No. I am stating what the order is.

Mr. O'Brien: You are stating language in the case.

The Court: Yes, he is stating the language in the case. Well, what I think I will do, in lieu of the words "certain results", we will insert "common plan or design."

We will leave in that clause, "unless there is per-

2490 suasive evidence to the contrary," and overnight you gentlemen may agree upon some different wording of this, which will be satisfactory to both sides.

Mr. Seeley: All right. It is often easier to restate a whole sentence than to try to fix up and change that phrase.

The Court: That will be the ruling, as far as No. 2 is concerned.

Mr. Adcock: Redraft?

The Court: Yes, sir, unless we hear to the contrary, we will use this, but overnight you gentlemen will perhaps want to redraft it, and we will take it up in the morning.

2491 The Court: The next is No. 3.

(Thereupon the plaintiffs tendered Instruction No. 3, in words and figures as follows:)

The Court instructs the jury that the owner of a copyrighted product may not by virtue of his copyright condition his license so as to tie to the use of the copyrighted product the use of other products which lie outside of the monopoly of the copyright licensed, or condition the license so as to control conduct by the licensee not embraced in the copyright monopoly or upon the maintenance of minimum admission prices which the public shall pay for an entertainment which includes features other than the particular picture licensed.

2492 Mr. Seeley: All right. My objection to No. 3 is that since there is no evidence that the owner of any copyright has attempted to use this copyright so as to tie the use of his copyrighted product to the use of any other product, the instruction is not based upon the evidence.

I believe the film license agreements here are copyright agreements which relate only to the films which are owned by the copyright owner; and I know of no provision in those agreements which is a tying agreement, tying those products with anybody else's products.

Mr. O'Brien: Neither do I, your Honor.

I note my objection this way: that the instruction is not applicable to the facts in the case, and it is therefore misleading. And again on that I object to it as an abstract statement of law, obviously taken in the same way, from some book.

The Court: This very problem came up in this Interstate Theatre case, some place down South, was it Texas?

Mr. McConnell: Yes, it did. The Interstate Circuit case.

2493 Mr. Seeley: But they had a different proposition.

Mr. O'Brien: No, it was not there.

Mr. McConnell: Here they are attempting to fix the admission price of a theatre which may exhibit something besides their particular product. That is exactly what the Court ruled in in the Interstate Circuit case.

Mr. O'Brien: No.

Mr. Seeley: I differ from that. I say that issue was not decided in the Interstate Circuit case.

Mr. O'Brien: In that case there was an agreement between the distributor and the exhibitor, not—

Mr. McConnell: Here is what the Court said:

Mr. O'Brien: Wait a minute.

Mr. McConnell: I am reading from page 621, 83 Law Edition. Here is what the Court said: "Because the patentee has power to control the price at which his licensee may sell the patented article, it does not follow that the owner of the copyright can dictate that other pictures may not be shown with the licensed film or the admission price which shall be paid for the entertainment, which includes features other than the particular license or than the
2494 particular picture licensed."

Mr. O'Brien: That is right.

Mr. McConnell: Now, here is a situation where the evidence shows that in practically every instance we have got our playing dates here, we have got the book which shows what was played on certain dates, we have a license which says you have got to show, you have got to have a minimum admission price for your whole entertainment regardless of what you are showing.

Mr. O'Brien: Nothing like that in our contract. It says that the price is—

The Court: Nothing like that in your individual contract?

Mr. Seeley: No.

The Court: That is what he is complaining about.

Mr. Seeley: That is what this instruction is.

The Court: You folks got together, and you used a lot of individual contracts.

Mr. O'Brien: No.

Mr. McConnell: That's right.

The Court: Out of those individual contracts arose this alleged conspiracy.

Mr. Seeley: No. Look at this instruction.

2495 The Court: I am talking about his theory, again. Do I state your theory right?

Mr. McConnell: Exactly right.

Mr. Seeley: All right, then—

The Court: All right.

Mr. Seeley: Let us get at this instruction. This instruc-

tion is limited to what one person, the owner of a copyrighted product may do by virtue of his copyright. Now, if he wants to make this a conspiracy instruction, that is a wholly different proposition.

Mr. McConnell: Now, just a minute, Mr. Seeley. Mr. Seeley has put in an instruction here on copyright, whereby he says he can charge anything that he wants, because of the copyright, by virtue of the copyright. Now, if he is putting that instruction in, we certainly have a right to qualify it.

The Court: Well, I think he refers to an individual copyright, there.

Mr. Seeley: That's right.

Mr. O'Brien: That is true.

Mr. McConnell: Yes, but even an individual cannot do it if he ties the use of his product to something else.

2496 Mr. Seeley: But you don't, unless there is a conspiracy.

Mr. McConnell: That is one of the facts which is in this case, as to whether or not you as an individual do not tie your admission price with that of all the others, under these—

Mr. Seeley: By means of a conspiracy?

Mr. McConnell: By means of your contracts.

Mr. Seeley: You mean one of the issues in this case is whether the individual license agreements here are valid or invalid?

Mr. McConnell: Certainly.

Mr. Seeley: This is the first I heard of it.

Mr. McConnell: We have had Mr. Shirley. I cross-examined him at length of the stand on Loew's contract Here is what he did. He went into it at great length. He and Balaban & Katz agreed as to the admission, the minimum admission prices which were to be charged the competitors of Balaban & Katz.

Mr. Seeley: Why, I differ from that because after he got through thinking he had proved that, I took the contract and read from it, and it turned out that it was just the opposite.

Mr. McConnell: Oh, no.

2497 Mr. Seeley: There is no such thing in there, no such thing in there.

Mr. McConnell: That is in this case.

The Court: I do not think you contend that there is

anything in these written contracts which indicate they are tied for the purpose of controlling prices other than that copyrighted article, do you?

Mr. McConnell: Well, there is, in one, yes, sir, very definitely in the franchise agreement.

Mr. Seeley: Well, I would like to have you point it out. We say there is not.

Mr. McConnell: Let us have that franchise agreement.

Mr. O'Brien: Another point I started to say about that southern case, or interstate case, that the minimum price was not the price which was to be charged by the exhibitor who was contracting with the film company. The agreement related to what should be charged by some one who is to play in another run.

The Court: Well, he contends that situation in this picture.

Mr. O'Brien: But that was in their contract. That is the difference. Our contracts all say that when you are playing our pictures, under this license, the minimum price is x cents. That is all it says.

2498 The Court: Well, is it your position we cannot go outside the contracts so far as this case is concerned?

Mr. O'Brien: I take it that this instruction—

The Court: That is not your proposition?

Mr. McConnell: Certainly not.

Mr. O'Brien: We are talking of this instruction, not the whole theory of the case.

The Court: But you go back to these individual contracts. There is no dispute but what an individual copyright owner can get contracts as though it was, and nobody could interfere with him.

Mr. Seeley: Then this instruction has to be stricken out.

Mr. McConnell: No, because—

Mr. Seeley: This instruction denies it.

Mr. McConnell: It states the law.

Mr. O'Brien: I want to note my further objection to the instruction. I guess I have, but it is an abstract.

Mr. McConnell: The Ethyl Gasoline Corporation case also holds, 84 Law Edition—there they attempted to put gasoline with ethyl fluid. There is not any question in this case that—take anyone of these contracts, providing

2499 for minimum admission price entertainment, which might be most anything.

Mr. O'Brien: Only when you license our picture.

Mr. Adcock: There is a different product involved.

Mr. McConnell: There are other products there with it, in connection with it.

Mr. Seeley: It seems to me that there is a world of difference between there being two pictures on a program, because an exhibitor chooses to do that.

Mr. McConnell: Oh, no.

Mr. Seeley: And what Mr. McConnell's authorities point out, which is where the holder of a copyright, or the holder of a patent controls that situation.

Mr. McConnell: Well, look at the Interstate case. You can not get it any plainer than that.

Mr. Seeley: I am familiar with that.

Mr. McConnell: They say here in this case—where is that Interstate case?

Mr. Seeley: It was a conspiracy case, pure and simple.

Mr. McConnell: They go on and say over and above the question of conspiracy, leaving that question aside, assuming there was no conspiracy, so these contracts themselves constitute a violation of the Sherman Act, and they go on and say why they do. They say aside from that question from conspiracy.

2500 Mr. O'Brien: Well, for my part, I will confine my remarks to the objections which I have for the record.

Mr. McConnell: They argued here that, because each man had a copyright, they were free to fix the minimum admission prices upon the subsequent-run exhibitors:

"The appellants argued that the distributors were free to license the films for exhibitors subject to the restrictions, just as a patentee, in a license to manufacture and sell the patented article may fix the price at which the licensee may sell it. * * *"

"That the parallel is not complete is obvious. Because a patentee has power to control the prices at which his licensees may sell the patented article, it does not follow that the owner of a copyright can dictate that other pictures may not be shown with the licensed film or the admission prices which shall be paid for the entertainment which includes features other than the particular picture licensed."

2501 Mr. O'Brien: We don't say that in our contracts.

Mr. McConnell: You say that if your picture is played in our theatre, we must charge a minimum admission price.

Mr. Seeley: We don't restrict you in anything else you want to show in your theatre.

Mr. O'Brien: It was a contract between the exhibitor and distributor; not what the exhibitor could do, but what subsequent runs could do. It was all arrived at in a single conspiracy on a demand made.

Mr. McConnell: They went on in that case, as you know, and said that aside from the question of conspiracy, these contracts still violate the Sherman Act.

Mr. Seeley: No, they did not.

Mr. McConnell: Let me have the case.

Mr. O'Brien: The first run exhibitor was undertaking to reach an agreement with all distributors as to what price the following run could run, and what the following run had to show on the program. It had nothing to do with minimum admission prices that were to be
2503 charged for first run; for example, in the Loop, by Balaban & Katz. They are in the same position down there, in a supposed agreement between the distributors and the exhibitor, in not only a conspiracy, but it undertook to say what should be charged to some other exhibitor playing in C week, and that the fellow playing in C week could not run two pictures at the time.

That is not what this contract says. They tell you the price. They said subsequent-run houses could not charge less than 25 cents.

2503 Mr. McConnell: They go on and say:

"Moreover, the provision in Interstate's contracts for the restriction against double billing stipulated for restraint upon competition with Interstate in the exhibition of films in the double bill in which neither Interstate nor the licensor had any interest by way of copyright or otherwise. The patent effect of the contract was to impose an undue restraint both as to admission price and the character of the exhibition upon competing theatre businesses habitually exhibiting the competitive pictures of different copyright owners. Through acceptance of its terms by the principal distributors the contract became the ready instrument by which Interstate succeeded in dominating the business of its competitors in the Texas Cities. The fact that the restrictions may have been of a kind which a distributor could voluntarily have imposed, but did not, does not alter the character of the contract as a calculated restraint upon the distribution and use of copyrighted films

moving in interstate commer[illegible] Even if it be assumed
that the benefit to the distributor from the restric-
2504 tions is one which it might have secured through its
monopoly control of the copyright alone, that would not extend the protection of the copyright to the contract with Interstate and to the resulting restraint upon the competition of its business rivals.

"A contract between a copyright owner and one who has no copyright, restraining the competitive distribution of the copyrighted articles in the open market in order to protect the latter from the competition, could no more be valid than a like agreement between two copyright owners or patentees."

Here is a contract between a copyright owner, RKO, and Balaban & Katz. What they attempt to fix as a minimum admission price upon what the competitors of Balaban & Katz shall play, comes squarely within the language of this decision.

"The consequence of the price restriction, though more oppressive, is comparable with the effect of resale price maintenance agreements, which have been held to be unreasonable restraints in violation of the Sherman Act."

Then they end:

2505 "We think the conclusion is unavoidable that the
conspiracy and each contract between Interstate and the distributors by which those consequences were effected are violations of the Sherman Act and that the District Court rightly enjoined enforcement and renewal of these agreements, as well as of the conspiracy among the distributors."

Mr. Seeley: It seems that the language he read just above proves my point.

The Court said:

"The fact that the restrictions may have been of a kind which a distributor could voluntarily have imposed,"—they recognize the fact that the distributor can do those things,—

"does not alter the character of the contract." They are talking about the fact that the contracts as they held, might pertain to a conspiracy.

(Continuing reading): "Even if it be assumed that the benefit to the distributor from the restrictions is one which it might have secured through its monopoly control of the copyright alone,"—

going back to the thought of what one man can do.

2506 Then they say:

"That does not make them all right in this case where there was a conspiracy."

Mr. McConnell: Conspiracy and contract.

Mr. Seeley: Of course, the contracts were—

The Court: Save your point on No. 3. I will give that. Let's go to No. 4.

(Thereupon the plaintiffs tendered Instruction No. 4, in words and figures as follows:)

The Court instructs the jury that damages are not rendered uncertain because they cannot be calculated with absolute exactness. It is sufficient if a reasonable basis of computation is afforded although the result be only approximate, and the Court further instructs the jury that if they find that a conspiracy exists among the defendants or some of them as charged, then such defendants found to be in such conspiracy are not entitled to complain that the precise damages suffered by the plaintiffs cannot be measured with the same exactness and precision as would have been possible if the conspiracy had not rendered difficult the ascertainment of the precise damages suffered

1507 by the plaintiffs.

Mr. Seeley: I have two objections to that. In the first place, the instruction, as written, assumes the existence of a purpose to monopolize, which I suppose can be cured by a couple of "if anys."

Much more serious than that, I object because it is the law that a violation of the anti-trust laws cannot be excused on anybody's part on the basis of business and necessity. The mere fact that the plaintiffs operated under this system according to what they thought was their business necessity, does not excuse them any more than they would permit the defendants to be excused from operating under this system, because we say it is our business and necessity.

Mr. McConnell: I think we have argued this matter at least three times in the course of this case.

Mr. O'Brien: What is this instruction?

Mr. Seeley: I am sorry. I turned too many pages and got No. 5.

The Court: I was looking to see where we could put in those words, "if any."

2508 Mr. O'Brien: My objection to No. 4 again, is that the instruction is not tied in by references to the evi-

dence or to the findings of the jury of the separate pleadings, which they must needs make before they can follow the direction in the instruction. In short, it is too abstract, and that is a matter both of form and substance.

Then again, Mr. McConnell, notwithstanding that three or four arguments which have been had, still assumes that if the jury finds a conspiracy, then he is entitled to damages. That is just pointing out the damages, just pointing out that he need not prove the damages with exactitude, but can make the unwarranted assumption that he is entitled to damages if a conspiracy is shown, without interpolating a direction to the jury that, if they find there is evidence that there is a conspiracy, and further find from all the evidence that, as a direct result of that conspiracy, there was an injury to the plaintiffs or their property, then, in fixing the damages and so on, it need not be done with absolute exactness, but leaves out that little detail of injury to property.

2509 Mr. McConnell: We have one instruction that says: "These are part of the whole series." It is not required that each instruction detail the evidence.

Mr. O'Brien: If you can show any instruction in which you recognize that point, I will withdraw my objection.

The Court: It is either in these or the ones that Mr. Seeley submitted.

Mr. McConnell: I have it in mine.

Mr. O'Brien: I don't mean—

The Court: That the damages are the proximate result of the alleged injury you claim exists here,—I think that is in farther on.

Mr. O'Brien: That is not quite my point. I, of course, concede that damages have to be proximately caused, but it must be shown first, as a fact, that there is some injury.

Mr. McConnell: That is an instruction in the case.

Mr. Adcock: The objection is, this assumes that the damage, if any, whatever it is, small or otherwise, may be shown by some evidence that is not certain.

2510 Mr. McConnell: You have plenty of instructions on that, Mr. Adcock.

Mr. Adcock: When it comes to the matter of injury, there must be certainty of proof. When it comes to the amount of damages, then there may be leniency.

The Court: That is all this comes to. We will pass this and go to No. 5.

Mr. Seeley: That is the one I had in mind before.

(Thereupon the plaintiffs tendered Instruction No. 5, in words and figures as follows:)

The Court instructs the jury that if they find that the plaintiffs had merely bought film from the defendants under contracts because of a business necessity and that the plaintiffs had not with a knowledge of the defendants' purpose to monopolize helped to build up a monopoly, then the plaintiffs are not in pari delicto with the defendants.

Mr. Seeley: That is objected to, first, on the ground that it says: "knowledge of the defendants' purpose
2511 to monopolize." That would have to be qualified by a phrase, "if you find from the evidence that the defendants had any such purpose."

The other objection goes to the whole instruction. I say, just as the plaintiffs claim in the last instruction, that business necessity is no excuse for our engaging in an unlawful practice. The same thing goes for them. They cannot absolve themselves by claiming they had business necessity.

Mr. O'Brien: My objections are along the same line. Mr. McConnell does not go on to show the converse.

Mr. McConnell: You have it in your instructions, on the converse.

Mr. O'Brien: I don't take any stock in Mr. McConnell's statement. It is not the law, because you have an instruction that says, "All these are to be read together and considered in their entirety," that that cures any error in not pointing out, step by step, the conclusions in any given instruction, except those which are entirely abstract. You can say to the jury that they have to follow the
2512 Court's instructions, but any such instruction which relates to the evidence, has to be essentially tied in within the four corners of the instruction itself.

Mr. McConnell: Now, that is not so. The Court says that in reading the instructions as a whole, it is to determine whether the instruction is good or not. You have read that, I guess, time and time again.

The Court: Let's go on to this point which Mr. Seeley makes. So far as the broad question of law is concerned, I understand the reason he is giving the instruction is, he is assuming that even if it is given, it is not properly worded.

Mr. McConnell: That is taken from the Eastman case.

The Court: They have asked for the opposite.

Mr. McConnell: That is right. In the Kodak case: "If during the preceding period when the plaintiff had been a customer of the defendant, and had not merely bought goods from the defendant because of a business ruling, but helped to build up the monopoly." This is the converse of that. In other words, if they had to buy the goods
2513 by business necessity, the proof here is that you could not operate this theatre without the defendant's product.

Mr. Adcock: Business necessity is a more general term.

Mr. McConnell: That is business necessity.

Mr. Adcock: It may be some other business necessity, I don't know.

Mr. Seeley: I don't know of any business necessity whereby you can compel the plaintiff's theatre to hold the Lex in first week and take clearance over the Hamilton, and hold it in second week, and take clearance over the Jackson Park and so on. Therefore, you did,—what you did was outside the conspiracy.

Mr. McConnell: That instruction is all right. I don't think that issue is in the case under the present pleadings.

The Court: You don't think this issue is in the case?

Mr. McConnell: If you are to plead pari delicto.

The Court: Why did you put it in then?

Mr. McConnell: Simply to meet the instruction
2514 which I assume they will offer here.

Mr. Seeley: Did I offer one?

The Court: Either you or Mr. Adcock offered an instruction which is just the opposite to this. We might as well decide that proposition right now.

Mr. O'Brien: I think there may be something about what Mr. McConnell said about the pleading.

Mr. McConnell: It will be argued before the jury, but I have an instruction on it, which—

Mr. O'Brien: May I finish? I would like to bring in an amendment to our answer in the morning.

Mr. McConnell: That is all right. I have no objection to that.

The Court: What do you say about Mr. Adcock's instruction?

Mr. McConnell: I think they can both be given. In the language of Mr. Adcock's instruction, he uses the word "voluntarily," which is sort of an ambiguous word for this jury.

The Court: If Mr. Adcock's instruction is given, if that is the law, you are out of court.

Mr. McConnell: Where is it? He says: "If we enter into it voluntarily.

2515 The proof shows it was under business compulsion, what is called business compulsion in the Kodak case.

The Court: The word that you criticize is the word that saves you.

Mr. McConnell: Without business compulsion.

Mr. Adcock: They voluntarily, there is no question about it, took clearance over various other theatres under this very system of release about which they complain.

The Court: Is that the only objection you have to this, that word "voluntarily"?

Mr. McConnell: Yes. If the plaintiffs, without acting—without any business compulsion, which follows the exact language of the Kodak case; that if during the preceding period in which the plaintiff had been a customer of the defendant, * * * * *

Mr. Adcock: Your Honor, if you will read the language of the Court—

Mr. McConnell: What Court?

Mr. Adcock: In the Eastman case. I endeavored to follow the Eastman case in drawing that instruction.

The Court: If you started at the same place, you 2516 surely wound up at different destinations.

Mr. Adcock: There was, as stated by the Court of Appeals, evidence from which the jury could justly reach the conclusion that the plaintiff was not a party to the monopoly, and that the plaintiff had complied with the defendant's restricted terms of sale merely for the reason that otherwise it could not purchase or secure the goods necessary in the conduct of its business.

Now, instead of stating "business necessity", it states that otherwise it could not have obtained the product.

Mr. McConnell: I won't object to that. "Otherwise they could not obtain the product."

The Court: In which one?

Mr. McConnell: He is suggesting a change in the instruction.

Mr. Adcock: No, in my own. I think that is all right. It leaves it up to the jury to determine whether it was a voluntary act on their part.

The Court: We will pass No. 5, and when we come to your instruction, we will give that.

Mr. O'Brien: When you say "pass," your Honor, do you mean you will give it?

2517 The Court: Yes.

Mr. McConnell: If you are going to give those, I have used a word that the jury may not know.

Mr. Seeley: Better change it to estoppel.

Mr. McConnell: What is the word you used?

Mr. Adcock: Estoppel.

Mr. O'Brien: Why not say "barred" or "precluded"?

Mr. Adcock: I think the word "precluded" is as good.

Mr. McConnell. "Are not precluded from asserting their cause of action against the defendants." We will use your word, "Are not estopped to complain."

The Court: The plaintiffs are not estopped to complain?

Mr. McConnell: Against the defendants.

Mr. Adcock: Not estopped to complain.

Mr. McConnell: Against the defendants.

Mr. Seeley: No.

The Court: "Are not estopped to complain against the defendants." Now, No. 6.

Mr. Seeley: No. 6?

The Court: Yes.

(Thereupon the plaintiffs tendered Instruction No. 6, in words and figures as follows:)

2518 The Court instructs the jury that an unlawful conspiracy may be formed without simultaneous action or agreement on the part of the conspirators and that acceptance by competitors without previous agreement of an invitation to participate in a plan the necessary consequence of which, if carried out, is restraint of interstate commerce, is sufficient to establish an unlawful conspiracy under the Federal Anti-Trust laws.

Mr. Seeley: That is another instruction taken from the Interstate Circuit case, I take it. It instructs the jury that an unlawful conspiracy may be formed without simultaneous action or agreement on the part of the conspirators and that acceptance by competitors without previous agreement of an invitation to participate in a plan, and so forth.

In the Interstate case, what happened was, as the evidence shows, the exhibitor down there sent out to each of the distributors a letter, and each copy of the letter
2519 had on top the names of all distributors. All the dis-

tributors could not help but know from the letter that each of the others had gotten the same letter. There was no restriction to that invitation. They all joined in the plan.

What the Court says and this instruction says is probably good law where you have those facts, but we don't have anything here that is any invitation to participate in the plan. Where is the invitation?

Mr. McConnell: I did not take that from the Interstate case.

The Court: This is just an absolute case of what the law of conspiracy is.

Mr. McConnell: That is right.

Mr. Adcock: It is not applicable to the evidence here.

The Court: Is it a correct statement of the law?

Mr. Adcock: It may be a correct statement of the law under the facts to be applied, but that is not the situation here and it could only mislead the jury in thinking that there was some invitation. There has been no evi-
2520 dence such as in the Interstate case. In that case there were letters sent out by the exhibitor to all the distributors giving the address of each one of them, and then appeared the suggestion of certain things. It appeared that they all did the things that were asked by the exhibitor. That is not the situation here.

The Court: I understand that, but I read this as an abstract statement of what the law of conspiracy is.

Mr. O'Brien: It has to have a relation.

The Court: Of course, it is related to the evidence. It is telling the jury that this is the law to be applied to the facts you have heard in evidence.

Mr. Adcock: But there are no such facts here.

The Court: It says: "An unlawful conspiracy may be formed without simultaneous action or agreement on the part of the conspirators and that acceptance by competitors without previous agreement of an invitation to participate in a plan the necessary consequence of which, if carried out, is restraint of interstate commerce, is sufficient to establish an unlawful conspiracy under the Federal Anti-Trust
2521 laws."

Mr. Adcock: The objection to that instruction is where it says, "without previous agreement of an invitation to participate in a plan."

Mr. McConnell: I don't care about the invitation there. —"to participate in a plan."

Mr. Adcock: There is no such invitation here.

Mr. McConnell: I don't care about the invitation,—"of a plan."

Mr. O'Brien: That would not make sense.

Mr. McConnell: "Without previous agreement to a plan, the necessary consequence of which",—I think that meets the objection.

Mr. O'Brien: It is an essential part of that instruction, as an abstract matter of law, how it came about, and it comes from the facts in the other case which are quite different from those here, where there was an invitation.

Mr. McConnell: You had an invitation here.

Mr. O'Brien: Did you have an invitation?

Mr. McConnell: We certainly did have an invitation, and apparently accepted it.

Mr. O'Brien: And apparently you did, too, and that was from 1927 on, before we ever came into Chi-
2522 cago.

Mr. McConnell: That instruction is taken right out of the Masonite case.

Mr. Adcock: You have a different proposition there, in the Masonite case.

Mr. McConnell: I don't think so.

The Court: Your suggestion is, you will change the wording and make it "without previous agreement to participate in a plan."

Mr. O'Brien: It would be clearly erroneous to state it that way. This statement of the law is all right as it stands, but there is no evidence showing an invitation here. That is the point.

Mr. McConnell: There is an invitation. You have a plan of release, a whole system in which they have to join, that for some business reason they joined. There certainly is evidence in this case, in which this law can be applied, if the jury sees fit.

Mr. Adcock: I wonder if we can have a recess, your Honor?

The Court: Yes. We will recess for ten minutes.

(Whereupon a recess was taken, after which the
2523 following proceedings were had:)

Mr. McConnell: We are now down to No. 7, are we not?

2524 Mr. Seeley: That now reads: "participation in a plan." I think it should read "knowing participation in the plan."

The Court: Where is that?

Mr. Seeley: Number 6.

The Court: Where do you put it?

Mr. Seeley: Just before "participation,"—"knowing participation."

Mr. O'Brien: Where do you find the word "participation?".

Mr. Adcock: We put it in.

Mr. McConnell: It will read this way: "The Court instructs the jury that an unlawful conspiracy may be formed without simultaneous action or agreement on the part of the conspirators and that knowing participation in a plan—"

The Court: "And that knowing participation."

Mr. McConnell: You have to have that "without previous agreement" and that "knowing participation"—"without previous agreement in a plan the necessary consequence—"

Mr. Seeley: Why don't you write it over tonight?

The Court: I haven't got it.

Mr. McConnell: Let me read it:

2525 "The Court instructs the jury that an unlawful conspiracy may be formed without simultaneous action or agreement on the part of the conspirators and that knowing participation by competitors without previous agreement in the plan the necessary consequence of which, if carried out," and so forth.

Mr. Adcock: Don't you want ~~to say~~ "unreasonable restraint"?

Mr. O'Brien: Unreasonable restraint.

Mr. Adcock: Unreasonable restraint.

Mr. McConnell: "Is an unreasonable restraint of interstate commerce."

Mr. Adcock: Yes.

Mr. O'Brien: Or "is an unreasonable restraint."

Mr. McConnell: Well, we have that covered by other instructions.

Mr. Adcock: An unreasonable restraint.

Mr. McConnell: "The necessary consequence of which, if carried out, is"—all right, "unreasonable."

The Court: Suppose you re-write that and bring it around in the morning.

Mr. McConnell: All right, I will rewrite number 6.

The Court: Now, we are down to 7.

(Thereupon the plaintiffs tendered instruction 7, in words and figures as follows:)

"The Court instructs the jury that if an agreement or agreements in violation of the Federal anti-trust laws is or are proved, the fact that films which are the subject of such agreements are copyrighted does not free the agreements so proved of their illegality, in other words, the existence of a copyright on a film does not because of such copyright exempt the owner of such copyright from the Federal anti-trust laws."

The Court: What objection is there to number 7?

Mr. Seeley: First, in view of the fact that we have two kinds of agreement here, individual license agreements and alleged agreement, or combination or conspiracy, I think the first and second lines ought to be changed. "The Court instructs the jury that—"

Mr. O'Brien: I wonder if you would read it over, would you, Mr. McConnell, so that we could get it in mind?

Mr. McConnell: You want me to read it to you?

Mr. Adcock: Read the whole thing.

(Mr. McConnell here read Instruction number 7 as above recorded.)

Mr. Seeley: All right. Now my objection is instead of saying "an agreement or agreements" in the first two lines, it should say "a contract, combination or conspiracy in violation of the Federal anti-trust laws."

Mr. McConnell: Well, that is all right, I haven't any objection to that.

Mr. Seeley: All right.

Mr. McConnell: "A contract, combination or conspiracy."

Mr. Seeley: And that is all right down to the semi-colon; now the last three lines, after the semi-colon, ought to be stricken, because it is not true, a hundred per cent, that the existence of a copyright does not exempt the copyright owner from Federal anti-trust laws. It does to this extent,—a copyright is in its inherent nature a statutory monopoly and, if properly used, not outside the scope of the monopoly laws. It is an exception.

Mr. McConnell: You want "in other words" in there stricken out, is that it?

Mr. Seeley: Yes.

Mr. McConnell: All right.

Mr. O'Brien: Strike the last three lines, you mean, then.

Mr. Seeley: Yes.

Mr. McConnell: Now, are we agreed on that one?

Mr. Seeley: That is all right with me that way.

Mr. Adcock: We haven't any objection.

Mr. McConnell: All right. Has your Honor got that, or shall I read it to you?

The Court: I have it.

Mr. Adcock: Why not rewrite them for the morning the way they are changed?

Mr. McConnell: Well, if we know the way they are changed.

The Court: You have just stricken out the word "agreement" or "agreements" and substituted the words "contract, combination or conspiracy." Then you have stricken out the last three lines.

Mr. McConnell: That is right.

Mr. O'Brien: I take it by making suggestions we do not imply agreement on these instructions. It is understood that our objections stand as far as they are not cured.

Mr. McConnell: That is right.

2529 The Court: That is right,—you have a standing record of objections.

Mr. Seeley: Are we down to 8?

Mr. McConnell: 8, yes.

(Instruction number 8, as tendered by the plaintiffs, is in words and figures as follows:)

"The Court further instructs the jury that if you find a price-fixing combination to exist among the defendants or some of them, then it is no concern of yours whether the result was or was not beneficial, and the fact, if you find it to be a fact, that the prices so fixed were reasonable does not make such fixing of prices lawful."

Mr. Seeley: I think that general principle is all right, but I don't like that phrase in the middle, "then it is no concern of yours whether the result was or was not beneficial." The essence of the instruction is "If you find a price-fixing combination to exist among the defendants, or some of them, and the fact, if you find it to be a fact, that the prices so fixed were reasonable does not

2530 make such fixing of prices lawful." That is good law, I guess. I make only the general objections I

made before that I don't think price-fixing is a proper issue in the case at all.

The Court: What do you think of that objection?

Mr. McConnell: I have no objection to that change.

The Court: So that will then read:

"The Court further instructs the jury that if you find a price-fixing combination to exist among the defendants or some of them, and the fact, if you find it to be a fact, that the prices so fixed were reasonable does not make such fixing of prices lawful."

Is that right?

Mr. McConnell: That is right.

Mr. Seeley: Are we down to 9?

Mr. McConnell: 9.

(Instruction number 9 as tendered by the plaintiffs, is in words and figures as follows:)

2531 "The Court instructs the jury that a contract between a copyright owner and one who has no copyright restraining the competitive distribution of the copyrighted articles in the open market in order to protect the latter from the competition is not valid and that an agreement illegal because it suppresses competition is not any less so because the competitive article is copyrighted."

Mr. Seeley: I object to number 9 on the ground that it states a proposition of law so abstractly that the jury could not be expected to understand how it applies to the issues in this case, and, specifically, I mean this,—it fails to make the proper distinction between what the owner of a copyright may do, acting independently for himself, and what he may not do as a member of a combination or conspiracy acting for someone else's benefit.

The Court: Why do you need this Instruction in view of the other Instruction you have about the use of a copyright?

Mr. McConnell: I think it is cumulative.

The Court: All right, we will eliminate number 9.

2532 Mr. Adcock: That is withdrawn?

The Court: Yes, sir.

(Instruction number 10 as tendered by the plaintiffs, is in words and figures as follows:)

"The Court instructs the jury that if they find that the defendants, or some of them, have entered into a combination to fix admission prices and that as an integral part thereof runs and clearances are set up for the exhibiting

of motion pictures under a so-called system of release and that as a result thereof the plaintiffs are unable to obtain motion pictures for exhibition in their theatre until after such pictures have been shown by the competitive theatres owned by Warner Bros. Theatres, Inc. or by Balaban & Katz Corporation and that as a proximate result thereof the plaintiffs are damaged, then your verdict shall be for the plaintiffs even though the plaintiffs did not attempt to exhibit motion pictures at prices less than the minimum admission prices fixed in plaintiffs' contract with the defendant exhibitors."

2533 Mr. Seeley: Well, number 10—there is no use repeating myself. I think when the first tendered Instruction was discussed, I made a full statement of my position with respect to price-fixing, and the plaintiffs start in sliding over price-fixing, which plainly did not damage him, to some other act, namely, the clearance system, which he thinks did,—and that is utterly improper. For all the reasons previously stated I object to this instruction.

Mr. Adcock: I join in that.

Mr. O'Brien: I do, too.

Mr. McConnell: My argument is the same,—it is a new legal conspiracy and damages—

The Court: All right, we will give that Instruction.

Mr. Adcock: It is given?

The Court: Yes, sir.

What about number 11?

(Instruction number 11 as tendered by the plaintiffs, is in words and figures as follows:)

"The Court instructs the jury that only in the event that you find that there exists no conspiracy or combination to fix admission prices or no unreasonable restraint of trade by the defendants by virtue of the Chicago

2534 system of release, will you have occasion to consider the relative merits of the plaintiffs' theatre as compared with theatres owned by one or more of the defendants, or to consider whether or not the plaintiffs demanded and sought to obtain a playing position in 'C' week."

Mr. O'Brien: I object to number 11 because it reads: "Only in the event that you find"—it is only in the event that the jury finds there is no conspiracy that it has occasion to consider the relative merits of the plaintiffs' theatres as compared with the other theatres, defendants' theatres.

I say that the relative merits of the theatre must be determined or may be determined in order that the jury may judge whether the defendants, especially the distributor defendants, acted in a business-like manner to their own best interests in licensing one theatre as against another, and that, in determining the existence or non-existence of a conspiracy, it is often essential first to determine
2535 whether they did act in an economic fashion, to their best interests. We have the matter turned right around in this Instruction, improperly so.

Mr. Seeley: Let's state my objection.

Mr. McConnell: Well, if the jury finds that restraint by virtue of price-fixing, it cannot be reasonable. The cases so hold. The only purpose of this "relative merits" in theatres, as I understand this case, is to try and justify in some manner, by holding it reasonable, this system of release.

Now, if they decide there is no price-fixing involved in this case, then it becomes a question of the reasonableness of the system of release. Without that feature, why then they have to consider that, but if the whole system is illegal and illegally impinges and affects our business, this other thing is extraneous and irrelevant.

Mr. O'Brien: Let me put this illustration or example. Suppose that the distributors were selling the Hamilton Theatre in C week rather than in second week. The evidence here as to the relative merits of the theatres
2536 is such that it would almost have to be concluded that that was an unbusinesslike act on the part of the distributor, each distributor, and that would in turn lead to an inference that the distributors, instead of acting singly for their own individual best interests, were acting collectively pursuant to some conspiracy to fix prices or to do something else.

Mr. McConnell: You have an Instruction on that, Mr. O'Brien, as to the reasonableness of it.

Mr. O'Brien: I know, but this Instruction tells the jury not to give a thought, "in determining whether there is a conspiracy, don't give any thought to the relative value of the theatres, and to the runs in which they are licensed, but go ahead first and see if there is a conspiracy."

Mr. McConnell: Well, I have no objection to considering the relative merits on the issue of conspiracy. The thing I am trying to bring out in there is that the question of C

week is not involved in this case if this is an illegal conspiracy.

If you want to amend the Instruction so that it reads:

"Will you have any occasion to consider whether or
2537 not the plaintiffs demanded and sought to obtain a
playing position in C week," I am agreeable to that. Does that meet your objection?

Mr. O'Brien: In other words, take out "will you have occasion—"

Mr. McConnell: "to consider—"

Mr. O'Brien: "to consider the relative merits."

Mr. McConnell: You are taking out now the "relative merits."

Mr. Adcock: There is one obvious thing,—it says "combination to fix admission prices." Now, there is no claim that there is any fixing of admission prices. It is minimum admission prices.

Mr. McConnell: Well, minimum admission prices.

Mr. Adcock: That should be certain.

Mr. McConnell: All right, minimum admission prices,—"have occasion to consider whether or not the plaintiffs demanded and sought to obtain a playing position in C week."

Mr. O'Brien: How does it read now, Mac, the way you have it?

Mr. McConnell: It reads now:

"The Court instructs the jury that only in the event
that you find that there exists no conspiracy or com-
2538 bination to fix minimum admission prices or no un-
reasonable restraint of trade by the defendants by virtue of the Chicago system of release, will you have occasion to consider whether or not the plaintiffs demanded and sought to obtain a playing position in 'C' week."

Mr. Seeley: Of course I make all the objections I made before, on these price-fixing instructions. There is no showing of any damage to the plaintiffs and it is not a Government suit and he has no right to complain of it until he has shown damages; and, furthermore, it is outside the issues shown in the complaint.

The Court: Let me have that correction.

Mr. McConnell: We are inserting "combination to fix minimum admission prices."

The Court: Yes.

Mr. McConnell: Then you drop down to "will you have occasion to consider" and we strike—

Mr. Adcock: Just a minute.

The Court: "Will you have occasion to consider."

Mr. McConnell: We are striking out down to the 2539 words, "whether or not the plaintiffs demanded."

The Court: "The relative."

Mr. McConnell: The relative merits.

Mr. Adcock: And you go down how far?

The Court: Down to "consider" before the word "whether."

Mr. Adcock: Strike from "the relative merits."

The Court: Yes, down to "consider," so it will read: "You will have occasion to consider whether or not the plaintiffs demanded and sought to obtain a playing position in C week.

Mr. Seeley, he has his objections that he just stated.

Mr. Adcock: In which we join. I suppose the record should show we join, without—

The Court: Yes, I understand any objection made by anyone you join in.

Mr. O'Brien: I want to add this objection. The words, "Chicago system of releases," as implied in the Instruction, of course we could not stop Mr. McConnell during the trial from using that term on cross-examination, and the like, but we don't believe there is any occasion for the Court to employ that description.

2540 Mr. McConnell: There isn't any dispute in the evidence about that. The clearance agreements are in.

The Court: Your objection to that will be noted too. Now, we are down to number 12.

(Instruction number 12, as tendered by the plaintiffs, is in words and figures as follows:)

"The Court instructs the jury that if you find from the evidence in this case a combination or conspiracy to monopolize or unreasonably restrain the competition in the licensing or the exhibition of motion pictures, or if you find a combination or conspiracy to fix admission prices in theatres exhibiting motion pictures licensed by the defendants or some of them, and if you further find that as a proximate result of such combination or conspiracy the plaintiffs are damaged, then in such case your verdict will be for the plaintiffs."

Mr. Seeley: Well, I object to the middle portion of it,

the portion reading, "Or if you find a combination or
2541 conspiracy to fix admission prices in theatres exhibiting motion pictures licensed by the defendants or some of them," on all the same grounds I have heretofore expressed concerning this price-fixing.

Mr. Adcock: Which one are you considering now?

Mr. Seeley: Number 12. Furthermore, it seems to me that we are getting a great deal of repetition on this matter of conspiracy and fixing prices. This is about the fifth instruction.

The Court: Well, if you have given this in substance before, why we won't give it again, that is certain, and, if it is given, I presume you want the word "minimum."

Mr. Adcock: Yes.

The Court: Before "admissions."

Mr. McConnell: We have not had any instruction that covers this except on the admission prices. This goes to "combination or conspiracy to monopolize or unreasonably restrain the competition in the licensing or the exhibition of motion pictures, or if you find a combination or conspiracy to fix admission prices in theatres exhibiting motion pictures licensed by the defendants or some of them, and if you further find that as a proximate result
2542 of such combination or conspiracy the plaintiffs are damaged."

That is a helpful instruction for you people, I should think.

The Court: Well, we will see that your objections are noted to that, and that will be given.

Now we are down to 13.

(Instruction number 13, as tendered by the plaintiffs, is in words and figures as follows:)

"The Court instructs the jury that if you find from the evidence in this case that the defendants or some one or more of them are engaged in a conspiracy or combination to fix admission prices for theatres licensed to exhibit motion pictures belonging to one or more of the defendants and that as a result of such conspiracy or combination the plaintiffs are unable to obtain licenses to exhibit motion pictures in a competitive market from the distributor defendants in this case and that as a result thereof the plaintiffs have suffered damages, then and in such event the
2543 plaintiffs are entitled to your verdict even though you may further find that the plaintiffs' theatre is not of

equal physical equipment or superior location to those theatres owned by the defendants or some of them and even though you may find that the plaintiffs did not demand of the defendants or bid for an earlier playing position than first week of general release, and you are further instructed that in such event you will not allow the plaintiffs damages based upon what admission they would have received on an earlier run but only on such loss of profits as they have sustained as a proximate result of such combination or conspiracy."

Mr. McConnell: I think all that has been covered by prior instructions.

Mr. Seeley: I was going to say that.

The Court: That is withdrawn.

Mr. Adcock: That is withdrawn?

Mr. McConnell: Yes.

The Court: Number 14?

2544 (Instruction number 14, as tendered my the plaintiffs is as follows:)

"The Court instructs the jury that Section I of the Sherman Act includes a conspiracy to create artificial conditions which necessarily impede or burden the due course of trade or commerce between the several states or restrict the common liberty to engage therein."

The Court: Now in Mr. Seeley's instruction he quotes the "act", the anti-trust law. Why do we need 14?

Mr. McConnell: I don't think we do, if you give that instruction of his. That is a good Instruction, I think.

The Court: I think he prepared some very good Instructions, both from his standpoint and ours, so we will withdraw 14, because I think Mr. Seele has that fully covered in the Instruction he has given.

(Instruction number 15, as tendered by he plaintiffs, is as follows:)

"The Court instructs the jury that it was not necessary for the plaintiffs to join as parties defendant to this
2545 suit all parties who may be shown to be engaged in a conspiracy with the defendants, since a person receiving injury from such a conspiracy has a remedy against one or all of the conspirators and may enforce that right against one or all at his election."

The Court: Is there any objection to the statement of law in 15?

Mr. Seeley: Yes. He says, "The Court instructs the jury that it was not necessary for the plaintiffs to join as parties defendant to this suit all parties who may be shown to be engaged in a conspiracy with the defendants."

Now, in the first place, there is no allegation, and, in the second, there is no evidence whatever that any one not a party to this suit engaged in a conspiracy with the defendants.

I see what this is headed toward—Mr. McConnell anticipates our arguing, as we will, that he was licensed in the same way by the non-defendants as he was by the defendants. But he has no right because we will make that argument to attempt to get the Court to give the jury an idea that the defendants here are just some of the conspirators and that there are others whom he will claim to be
2546 the non-defendant distributors. The conspiracy and the parties to it are as he made it in his allegation and proved it in his proof, and nobody else is alleged or proved to be in it except the defendants here.

The Court: What do you say to that objection?

Mr. McConnell: Well, I say this, your Honor,—the law is perfectly plain that I can pick out any number of conspirators and through them,—and I have cases here on it.

The Court: Well, that is true, but here there isn't anything in the evidence that there are any other conspirators.

Mr. McConnell: Well, the evidence shows that these other distributors are doing the same thing exactly. That was brought out by a number of witnesses,—had the same minimum price schedules, had the same system of release, that they refused to license us in the same way. The evidence shows it.

The Court: Is there evidence here of that kind?

Mr. McConnell: Yes, there is evidence of this kind from the mouths of their own witnesses.

Mr. O'Brien: The basic averment of the com-
2547 plaint is that there was one conspiracy on the part of the defendants to favor their affiliated houses here over those of the independent exhibitors. As to distributors not defendants to the suit, the evidence, such little as there is, shows that often they license those houses in the same runs, but it also shows that they have no houses here at all, don't operate theatres in Chicago. So that it is plain that none of those folks could have any part, any

reason to having a part in the conspiracy of the kind averred here, which is the favoring of their own affiliated houses.

Mr. McConnell: I don't understand that my conspiracy is as narrow as that.

The Court: Well, if you are going to make that point in your argument why isn't he entitled to it in his Instruction?

Mr. O'Brien: Nobody says that.

The Court: Mr. Seeley said that this is one given in anticipation of an argument which you folks intend to make about parties who are not charged here with being members to this conspiracy.

Mr. McConnell: That leaves me unable to answer
2548 their argument, because I cannot quote the law.

Mr. O'Brien: What argument?

Mr. McConnell: They are going to argue here that these other people were not joined as defendants. Well, Mr. Seeley argued it here. He said we should divide up the damages. You can sue any conspirator and get all the damages from any one of them,—but he was going to partition the damages.

Mr. Adcock: There is no attempt to show that these other distributors were a part of this conspiracy or members of this conspiracy.

The only thing that I know of in the evidence is some testimony to the effect that they asked, that is Mr. Salkin asked other distributors to play in an earlier playing position than first week for the Jackson Park. Then the only other evidence that I know of is that, when they wanted to move the Hamilton back, they sent a registered letter to all the distributors, that is, when they wanted to claim the benefit and enforce the provision with reference to other clearance over the Hamilton Theatre. Now that is
2549 the only evidence I know of in the record about it.

Mr. McConnell: The evidence, as I recall it, was on the first day. We have all the contracts of all the distributors with our theatres in this record. That includes not only the defendants but all the other distributors. Those contracts show these minimum admission prices in them and the penalties. The testimony of Mr. Immerman was that all distributors licensed in the weeks of release at minimum admission prices. Mr. Salkin testified he ran into the same thing with the other distributors. Now those are facts from which I can argue before the jury.

The Court: Argue what?

Mr. McConnell: Well, if they argue here that we have not joined all the parties.

Mr. Seeley: That is not what we are going to argue.

The Court: How can they make that argument?

Mr. O'Brien: I can state right now—

Mr. McConnell: If they are not making the argument I haven't any question about it.

The Court: They all seem to agree that there is no evidence to that effect, so we will withdraw 15.

2550 Mr. O'Brien: In other words, to get that plain, because if I make such an undertaking, we make no complaint, we don't claim that you should have joined the other distributors as defendants to this suit in order to maintain the action here.

Mr. Adcock: The Instruction is withdrawn.

Mr. Seeley: No. Now I want to make it clear,—I certainly think I have the right to comment, in my closing argument to the jury, about the fact that these other distributors licensed pictures in the same way as the defendants. What I say I am not going to do, I am not going to claim that Mr. McConnell should have joined them as parties to this case.

The Court: Well, he can argue the other side of it, so what do we need the instruction for?

Mr. McConnell: I think we are clear on it.

The Court: He said these instructions are going to be in here, all these instructions are one series.

Mr. O'Brien: 15 is withdrawn?

The Court: Yes, sir.

2551 (Thereupon the plaintiffs tendered Instruction No. 16, in words and figures as follows:)

"The instructions given to you are and constitute one connected body in series, and should be so regarded by you; that is to say, you should apply them to the facts as a whole and not detach or separate any one instruction from any or either of the others."

The Court: You say you object to 16, Mr. Adcock?

Mr. Adcock: Your Honor, I have not had a chance to read these carefully.

Mr. O'Brien: I have no objection to 16.

The Court: All right, 16 is given.

Mr. Seeley: Then we come to a series of instructions that almost duplicate the others.

The Court: Just about the same ones as you have. That one has to do with the credibility of witnesses. The other one is how they should consider the evidence.

Mr. Adcock: 17 is given?

The Court: This one about inspecting the premises, you have that in your instruction.

Mr. Seeley: Yes, we have.

2552 Mr. McConnell: Well, we don't want any duplicate instructions, I agree with that.

The Court: Suppose we set these aside from 17 to 21 and we will start on their instructions, and if we don't find these in their we will come back and talk about it.

Mr. O'Brien: How about the three of yesterday?

Mr. Adcock: How far have we gone? To 18?

The Court: No, we finished 16.

Now, there were three late starters they brought in here yesterday.

Mr. Korfist: I think they should be identified first, by number, and then we will know what we are talking about.

The Court: How do you start out? Your next number is 22.

Mr. Adcock: Well, how far have you gone?

The Court: To No. 16. We have set aside from 17 to 21 because we think they are in Mr. Seeley's instructions, and, as we go over those, we will check them.

Mr. McConnell: And this next one will be 22.

The Court: Which one is the next one?

Mr. McConnell: "The Court instructs the jury
2553 that if you find that the defendants knowingly entered into a price-fixing combination,—"

(Instruction No. 22, as tendered by the plaintiffs is in words and figures as follows:)

"The Court instructs the jury that if you find that the defendants knowingly entered into a price-fixing combination, such combination is illegal under the Sherman Act, and this is true even though you find that in negotiating and entering into clearance agreements with Balaban & Katz Corporation and Warner Bros. Theatres, Inc., such defendant distributors of motion picture film in negotiating with said exhibitors acted independently of the others, negotiated clearance contracts only with Balaban & Katz Corporation and Warner Bros. Theatres, Inc., desired such agreements regardless of the action that might be taken by any of the others, did not require as a condition of its ac-

ceptance that Balaban & Katz and Warner Bros. make such an agreement with any of the others, it is enough if you find that knowing that concerted action was contemplated and invited, the distributors gave their adherence to the scheme and participated in it, and if you find from
2554 the evidence that such a price-fixing combination was knowingly entered into by the defendants in this case, or some of them, then the plaintiffs are entitled to recover from such defendants, if any, as you find to have joined the scheme, any and all damages proximately caused the business of the plaintiffs by an act done by any of the defendants in the course of the carrying out of such combination or conspiracy."

The Court: That is 22. Does everybody find that?

Mr. Seeley: I have not found that.

Mr. O'Brien: How does it start?

The Court: That is the longest one of the three, if you have the three there.

Mr. O'Brien: Yes, all right.

The Court: Now, what is the next?

Mr. McConnell: The next one is: "The Court instructs the jury that any act, however innocent and legal if done alone,—" and so forth.

Mr. O'Brien: What did you do with the long one?

The Court: We have not done anything. We are just numbering them. The longest one is 22, and the one he read about, "any act, however innocent" in the first
2555 line, is 23. And the other one is 24.

Now, let us consider No. 22.

(Instruction No. 22, as tendered by the plaintiffs, is in words and figures as follows:)

"The Court instructs the jury that any act, however innocent and legal if done alone, may be illegal if done in the course of a conspiracy and that the fact that double featuring if done as an isolation act would be legal does not foreclose the jury from considering its effect when done in conjunction with an illegal combination or conspiracy if found to exist, and you are further instructed that if you find from evidence in this case that the institution of double features by the Balaban & Katz Circuit was designed to make more effective the alleged combination and conspiracy and if you find that with knowledge of the institution of double features the alleged combination and conspiracy continue, then the plaintiffs are entitled to recover as dam-

ages such loss of profits of any as are occasioned as a proximate result of said combination and conspiracy."

Mr. Seeley: Well, I have read about two-thirds of
2556 the way through it and I am lost. I can not possibly make any sense out of it.

The Court: That just seems to me to be a combination of several other instructions.

Mr. McConnell: All right.

The Court: Gather them all up and put them into one.

Mr. McConnell: All right.

The Court: That is the way I look at that. Withdraw No. 22.

Mr. Adcock: Withdrawn.

The Court: Now, 23.

Mr. McConnell: Now, there is a misspelling here in the fifth line of No. 23. It should read, "if done as an isolated act," not "isolation act."

Mr. Adcock: Where is that?

Mr. McConnell: The fifth line of 23.

Mr. Adcock: Oh, yes.

Mr. O'Brien: Well, my objection to that, the first objection is in the 8th line after the word "exist." I think it should be indicated something like this,—"Not unless if done in"—rather, that is not true, "Unless the act is done in furtherance of the object of the conspiracy."

Mr. McConnell: I don't think that is a correct
2557 statement of the law.

Mr. Seeley: Oh, I think it is.

The Court: He says it makes more effective the alleged conspiracy.

Mr. Seeley: Well, basically, I make this objection to it. I say there is absolutely not one word of evidence in this case that double featuring was instituted by the defendant exhibitors pursuant to any conspiracy whatever, either the one claimed by the plaintiffs in the pleadings or any other conspiracy, or that it was a part of any conspiracy, and because there is no evidence I think it is utterly erroneous to give an instruction of this kind.

The Court: What do you say about that?

Mr. McConnell: I say this, if the Court please, and I think you will see immediately what the situation is with reference to that. Here we have a conspiracy, and any conspiracy operates on a given stage with the knowledge that the conspirators know of the stage, and we come along here

in 1936 and we institute double features, and there is quite a bit of evidence about it and how it was done. There is your stage. And your conspiracy goes on; it does not stop, it goes on and keeps on, on that set stage.

2558 Now, working on that different stage, it had some effect, but it is not necessary to say that the stage upon which the conspiracy acts is part of the conspiracy. Now, conspiracy goes forward with knowledge of what the condition is in the industry upon which it is acting. The damage comes from the conspiracy. I don't think there is any question about it.

Mr. Seeley: It seems to me that if that were true—

The Court: Well, suppose these theatres had put on a few vaudeville acts, or something like that, in order to bring these people in; would you charge that was an act of conspiracy?

Mr. McConnell: Well, if, knowing that a conspiracy exists, and a scheme, as we have here, and take an advantage of that.

Mr. Immerman testified here that, knowing a situation, knowing the drawing power of double feature, and knowing the effect it would have on the subsequent run of theatres under this sort of a system of release, he moved his theatres forward and backward under different admission price schedules. And all the distributors knew about it and they all knew about the system of re-

2559 lease; they all knew the conditions. Certainly that is part of the case.

Mr. Adcock: Then as I understand it the condition would be the same if nobody else had gone to double features except Balaban & Katz.

Mr. McConnell: Well, yes, because the conspiracy could have stopped then and stopped that additional damage.

Mr. Adcock: Would Balaban & Katz have been alone liable for the damage suffered?

Mr. McConnell: The damage flows from the illegal conspiracy.

Mr. Adcock: No.

Mr. McConnell: Without the conspiracy the double features wouldn't have affected anything here; not at all.

Mr. O'Brien: Why, Mr. McConnell certainly loses me there.

Mr. McConnell: Why, I think it is just as clear as it is a matter of proximate causation.

Mr. O'Brien: There just isn't any proof that the double featuring arose as the result of any conspiracy, whether the one complained of or any other.

2560 Mr. McConnell: The double featuring took place here and after it took place this conspiracy went forward. That is the thing it is acting upon. They could have stopped it, but they didn't. They went forward.

Mr. Adcock: This isn't the first time that double features have taken place. The evidence is clear that in 1913—

The Court: I don't think I am going to give that instruction, this 23.

Mr. McConnell: Do I have to except on this record?

The Court: You better.

Mr. McConnell: I except to the not giving of 23.

The Court, Yes, sir.

Mr. Adcock: You don't have to except.

Mr. Seeley: I think we will all except later and refer back to the grounds we state then.

The Court: Well, if he didn't state anything now—.

Mr. Seeley: Well, he ought to state his position, but I guess he did, at some length.

The Court: What about 24?

(Instruction 24, as tendered by the plaintiffs, is as follows:)

2561 "The Court instructs the jury that if you find from the evidence in this case that there was no combination or conspiracy to fix admission prices on the part of the defendants and that there is no unreasonable restraint of trade, you will still have to consider whether or not the plaintiffs have been arbitrarily or unreasonably refused a prior run in a week by the defendants, and in considering this question you will also take into consideration the relative merits of the theatres involved and the relative locations of the theatres, the ability or inability of the plaintiffs to make an offer or bid for such earlier playing position, and the question of whether or not the plaintiffs have been prevented by the defendants from making a bid for such run, and if you find that the plaintiffs have never been offered an opportunity by the defendants to bid for such prior run, then the mere fact that the plaintiffs have tendered no money for such prior run will not prevent their recovery as the law will not compel a person to do a useless act."

Mr. O'Brien: I think that fundamentally this instruction—

The Court: Isn't this the one we had here awhile ago?

Mr. McConnell: No, we haven't had this before.

Mr. Adcock: Well, we had the same proposition in another instruction.

The Court: The one we had about C week.

Mr. Adcock: Yes.

Mr. McConnell: Yes, but this is the converse of that. In other words, if the jury finds this is a reasonable and legal system of release, then they will have a right to consider the relative merits of the theatres and, say whether or not we comply sufficiently to obtain the run.

The Court: What do you folks say about that?

Mr. Seeley: I say this, your Honor—we are being sued here only by reason of one thing, Section 1 of the Sherman Act, which says that it is unlawful to restrain trade unreasonably. Now, when he offers an instruction and says even if there is no unreasonable restraint of trade you may consider such and such, what is the basis of his cause of action? As I understand it, this case is based upon proofs of an unreasonable restraint of trade, and if
2563 the jury finds there is none then the case is over.

The Court: What do you say to that—if you find there is no unreasonable restraint?

Mr. McConnell: That should be modified by inserting after "unreasonable restraint of trade" the words "by virtue of the system of release." What I am trying to say there is the system may be held to be unreasonable by the jury, but its use, arbitrarily refusing us a playing position in a system may be arbitrary and may be unreasonably refused, and that is a violation of the Sherman Act.

Mr. Seeley: I think that ought to be rewritten, because there is one other factor that ought to be inserted in there.

The Court: What is the other one?

Mr. Seeley: Combination or conspiracy. "You will still have to consider whether or not the plaintiffs have been arbitrarily or unreasonably refused a prior run in C week" by reason of an unlawful combination or agreement among the defendants or some of them.

2564 The Court: Why don't you rewrite that and bring it in in the morning.

Mr. McConnell: All right.

Mr. Adcock: Minimum admission prices.

The Court: And Mr. Adcock's suggestion about the "minimum" before "admission prices."

Mr. McConnell: That is right.

The Court: Now we will consider Mr. Seeley's.

2565 Instructions Tendered by Mr. Seeley on Behalf of Certain Defendants.

The Court: Do you have his numbered, Mr. McConnell?

Mr. McConnell: I don't think I do. I don't think he numbered them.

The Court: He numbered the ones he gave me.

Mr. McConnell: I think only the original set is properly numbered.

The Court: Well, the first one marked "1" begins, "Preliminary to your being accepted and sworn as jurors."

(Instruction No. 1, tendered by Mr. Seeley on behalf of certain defendants, reads as follows:

"Preliminary to your being accepted and sworn as jurors in this case you were examined by counsel for both plaintiffs and defendants as to your competency and qualifications to act as jurors in this case. As a part of such examination, each of you answered all questions asked by counsel. Your answers showed that you were competent and qualified to act as jurors in this case and the parties to his suit accepted you as jurors on the faith of
2566 your answers. The answers you then made to said questions in regard to your competency, qualifications, fairness, lack of prejudice and freedom from passion and sympathy are as binding on you now as they were then and should so remain until you are finally discharged from further consideration of this case. It would be improper for you to disregard the answers that rendered you competent as jurors."

The Court: There can't be much objection to that, is there?

Mr. McConnell: That is all right.

Mr. O'Brien: How does the next one start?

(Instruction No. 2 as tendered by Mr. Seeley is as follows:

"It is the duty of the Court to state to you in the form of instructions the principles of the law which apply in this case and it is your duty as jurors to follow the law

as given to you in these instructions and to apply it to the evidence in reaching your verdict. The instructions given to the jury are and constitute one connected body and se-
ries and should be so regarded by the jury; that is
2567 to say, they should apply them to the facts as a whole and not detach or separate any one instruction from any of the others.

"The Court instructs you that it is your duty to accept the instructions of the Court as to the law in this case and that any statement made by counsel as to what the law may be which is contrary to the law as given you in the Court's instructions should be wholly disregarded and given no consideration in arriving at your verdict."

The Court: I think in that, at the bottom of that first paragraph you heave the exact words of Mr. McConnell's instruction 16,—"instructions given to the jury are and constitute one connected body and series and should be so regarded by the jury; that is to say, they should apply them to the facts as a whole and not detach or separate any one instruction from any of the others."

Mr. McConnell: That is right, the same language.

The Court: What will we do? Take out your 16 and give this?

Mr. McConnell: Do it either way.

The Court: Suppose we withdraw your 16 and leave this in.

2568 Mr. McConnell: All right.

The Court: I take it the rest of that instruction is unobjectionable?

Mr. McConnell: Yes, there is no objection to that instruction.

Mr. Seeley: No. 3 begins, "While it is the duty of the Court to declare the law,—"

(Instruction No. 3, as tendered by Mr. Seeley, is as follows:

"While it is the duty of the Court to declare the law, and the duty of the jury to be governed by that law in their consideration of the evidence, it is, on the other hand, your exclusive province and right to pass upon the facts in the case and upon the credibility of the witnesses. With those functions the Court has nothing whatsoever to do, other than to endeavor to see that only proper evidence is permitted to appear before the jury for their consideration. It is not the intention of the Court to influence in any way

your judgment as to the facts of the case. If, therefore,
during the progress of this trial you have gathered
2569 any impression from anything which the Court may
have asked of a witness or may have stated in its rulings, or in the course of discussions of counsel, as to the views or opinion or judgment of the Court with respect to the facts of this case, or as to the weight of any evidence, or as to the credibility of any witness, you should disregard that impression and base your verdict entirely upon your own judgment as to what the evidence establishes."

The Court: Is there any objection to that?

Mr. McConnell: No.

The Court: You have another one in here,—the credibility of witnesses, haven't you?

Mr. Korfist: Yes, we have.

The Court: I know you have, but I mean Mr. Seeley. Yes, the next one, "The jury are the sole judges of the credibility" of the witnesses.

Mr. Seeley: Yes.

(Instruction No. 4, as tendered by Mr. Seeley, is as follows:

"The jury are the sole judges of the credibility and weight to be given to the testimony of the witnesses.

2570 "In weighing the testimony of each witness you should consider all of the circumstances under which the witness testified; his or her demeanor on the stand; the relation which he or she bears to any of the parties; the manner in which he or she might be affected by the outcome of this case; his or her manner of testifying; apparent candor and fairness, or lack thereof; the reasonableness or unreasonableness of his or her story; his or her apparent intelligence or lack of intelligence; the extent to which he or she is corroborated or contradicted by other credible evidence, and any other circumstances that tend to throw light upon his or her credibility.

"If counsel for either side, either in their arguments or at any other stage of the trial, have made any statements which are not supported by any evidence or proof, it is the duty of the jurors to entirely ignore such statements and not to be influence in the least by such statements in arriving at their verdict.

"Evidence offered by either party to which objection

was sustained or which was stricken out by order of
2571 the Court is not before the jury and should not be considered by you in arriving at your verdict."

Mr. McConnell: That is 4?

Mr. Seeley: Yes.

Mr. McConnell: That is all right. I have no objection to that instruction. It is practically the same as our 17.

The Court: Isn't that practically the same as your 17?

Mr. Korfist: That is correct.

The Court: We will withdraw your 17.

Now we are on No. 5 of his, which is a short one.

(Instruction No. 5, as tendered by Mr. Seeley, is as follows:

"If you believe that any witness has knowingly and wilfully testified falsely to any matter material to the issues in this case, you may disregard entirely the testimony of such witness, except in so far as it is corroborated by other credible evidence or by facts or circumstances proved on the trial."

2572 The Court: Some lawyers have told me that is not the law.

Mr. Seeley: That is news to me. I have heard it given repeatedly, in both the state and federal courts.

The Court: Well, you do, but these personal injury lawyers, they say that that is not the law. You folks can look it up. *People* v. *Wells*, 350 Illinois, 347, and *People* v. *Flynn*, 378 Illinois, 351.

Mr. O'Brien: I don't care about this instruction.

Mr. Seeley: I would just as soon withdraw it. It is just one of these stock instructions that I put in here.

Mr. McConnell: Withdraw it?

Mr. Seeley: Yes.

The Court: All right, we will withdraw your No. 5.

2573 The Court: Well, the next is an instruction usually given where corporations are defendants.

(Instruction No. 6, as tendered by Mr. Seeley on behalf of certain defendants, is as follows:)

"You should not allow the fact that the defendants in this case are corporations to influence your verdict in any way. It is your duty to give these corporations the same impartial consideration in weighing the evidence and in arriving at a verdict as you would give to any individual."

The Court: Now, No. 7 is where they viewed the premises.

(Instruction No. 7, as tendered by Mr. Seeley on behalf of certain defendants, is as follows:)

"The purpose of the Court in permitting the jury to inspect and view the premises of the several theatres involved in this case was for the sole purpose of enabling you to better understand the evidence presented in the court room. Any fact which you may have learned in the course of inspecting such premises is not evidence
2574 in the case and should not be considered by you as such but you should determine the issues herein entirely from the evidence received during the trial."

Mr. McConnell: We gave the same instruction.

The Court: What one of yours is that? You have given exactly the same instruction.

Mr. Adcock: There is a difference here.

Mr. O'Brien: Mr. McConnell's No. 19.

The Court: 19?

Mr. O'Brien: Yes. We just passed it.

The Court: Well, then, we have not given it.

Mr. O'Brien: No.

The Court: We will withdraw your 19 then. That is exactly the same thing, isn't it?

Mr. O'Brien: Substantially.

Mr. Adcock: No, there is a difference.

The Court: Well, not much, is there?

Mr. Seeley: No material difference.

The Court: They are supposed to look at the premises and then not remember anything they saw out there.

Mr. Adcock: All right.

Mr. McConnell: That is 7.

The Court: That was 5.

2575 Now, No. 8 is where he states the law by quoting from the statute.

(Instruction No. 8, as tendered by Mr. Seeley on behalf of certain defendants, is as follows:)

"The plaintiffs, Florence B. Bigelow, Marion B. Koerber, John E. Bloom and William C. Bloom, have brought this suit against the defendants, RKO Radio Pictures, Inc., Loew's, Incorporated, Twentieth Century-Fox Film Corporation, Paramount Pictures, Inc., Balaban & Katz Corporation, Warner Bros. Pictures, Inc., Vitagraph, Inc., Warner Bros. Circuit Management Corporation and Warner Bros. Theatres, Inc., under Sections 1, 2 and 7 of an Act known as the Sherman Act, and Sections 1 and 4 of the Clayton Act.

"Section 1 of the Sherman Act provides:

"Every contract, combination, in form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States * * * is hereby declared to be illegal * * *.

"Section 2 of the Sherman Act provides:

"Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States * * * shall
2576 be deemed guilty of a misdemeanor, * * *.

"Section 7 of the Sherman Act provides:

"Any person who shall be injured in his business or property by any other person or corporation, by reason of anything forbidden or declared to be unlawful by this Act, may sue * * * and shall recover threefold the damage by him sustained, and the costs of suit, including a reasonable attorney's fee.

"Section 1 of the Clayton Act, so far as here applicable, defines 'anti-trust laws' as including the Sherman Act and the Clayton Act, defines 'commerce' as meaning trade or commerce among the several states, and defines 'person' or 'persons' as including corporations.

"Section 4 of the Clayton Act is substantially the same as Section 7 of the Sherman Act, authorizing any person who shall be injured in his business or property by reason of anything forbidden in the anti-trust laws to bring suit for threefold damages, costs and attorney's fees."

The Court: What is Section 15 of the Clayton Act that you refer to in your bill of complaint?

Mr. McConnell: That is the right of injunction, I believe.

Mr. Seeley: The jury would not have anything
2577 to do with that.

The Court: Oh,—that is right.

Mr. McConnell: I have no objection to that.

Mr. O'Brien: Where does that one end?

Mr. Seeley: At the end of the page. It is all on one page.

The Court: It is all on one page.

Mr. O'Brien: What is the number of it?

The Court: It is No. 8.

The next one is No. 9, a little short one, saying that not every contract is unlawful.

(Instruction No. 9, as tendered by Mr. Seeley on behalf of certain defendants, is as follows:)

"Not every contract which restrains trade or commerce is unlawful under said Section 1 of the Sherman Act, but only those restraints which are in their nature unreasonable are thereby made unlawful."

Mr. McConnell: Well, that is not a correct statement of the law. Restraints reasonable or unreasonable are illegal per se, regardless of whether or not they are unreasonable.

Mr. Seeley: They are unreasonable per se. That 2578 is what the Court says. He is referring to price fixing. The Court says price fixing is unreasonable per se.

Mr. McConnell: Well, I have an instruction on that.

The Court: That is No. 9, that was Mr. Seeley's No. 9.

Mr. O'Brien: Which is your 10?

The Court: 10 is the alleged contract, combination, conspiracy, and so forth. He has it divided into first, second and third.

Mr. O'Brien: All right.

(Instruction No. 10, tendered by Mr. Seeley on behalf of certain defendants, is as follows:)

"The alleged contract, combination, conspiracy, monopoly or attempted monopoly charged by the plaintiffs in this case is claimed to have had for its supposed objects one or more of the following:

"First: To maintain in Chicago and its environs a system of releasing motion picture film in such manner that theatres owned or operated by the defendants or their subsidiaries were given preference and priority 2579 in the exhibition of such film over independent exhibitors, including the plaintiffs, and enjoyed prior runs of such film and clearance in the exhibition thereof over competing theatres, including the plaintiffs' theatres, not owned or operated by the defendants or their subsidiaries.

"Second: To discriminate against the plaintiffs' theatre by refusing to license the exhibition of motion picture films in said theatres in a run earlier than the first week of Chicago general release, being the 10th week after the conclusion of the first run of any such film in the Chicago Loop.

"Third: To force the plaintiffs to exhibit double fea-

ture programs in their theatres by introducing double feature programs in theatres affiliated with the defendants."

Mr. Seeley: Well, of course, that is based on the complaint, as I understand it, and I offer it on that theory. Mr. McConnell will doubtless object.

Mr. McConnell: Now, you just let me make my own objection to this. Maybe I won't have any.

Mr. Seeley: I have no doubt that you will.

Mr. McConnell: Well, it does not include all the—

2580 The Court: What is left out?

Mr. McConnell: He is leaving out the fixing of minimum admission prices, which was an essential part of the conspiracy,—unless it is cured by the other instruction.

The Court: Which other instruction?

Mr. Seeley: I think you will find it in my instruction.

Mr. McConnell: This is a summation of the whole business.

The Court: You should be permitted to write this instruction. This is the story about your lawsuit.

Mr. O'Brien: Where, in the complaint, do you talk about minimum admission prices?

Mr. McConnell: The complaint alleges a conspiracy in violation of the Sherman Act in which we are damaged in a number of different ways. Now he has left out of it—he attempts to put in the essential elements which I must prove.

The Court: That is in the next instruction. All this is,—it is supposed to be a synopsis of your complaint.

Mr. McConnell: Supposed to be a synopsis of my case, I assume. It seems to me it is contradictory in a way. It is involved and attempts to go over the whole case. It

2581 leaves out the legal features of it in the fixing of minimum admission prices.

Mr. Adcock: Well, isn't the minimum admission price part of the release system of which they complain?

Mr. McConnell: Yes, it is.

Mr. Adcock: That is your theory, isn't it?

Mr. McConnell: That's right.

Mr. O'Brien: I don't see anything in the complaint about it.

The Court: That they have maintained in Chicago a system of release of motion pictures in a manner that does injury to your clients. Now you come along in your in-

struction and say the vicious part of the so-called Chicago release system had to do with the fixing of prices.

Mr. McConnell: That is right. That made it illegal.

The Court: You don't mention fixing prices in your bill of complaint at all.

Mr. McConnell: That is true.

The Court: You spell that out in your evidence.

Mr. McConnell: That is right.

The Court: And all this covers, as I understand it, is the complaint.

Mr. McConnell: All right. That is all right with
2582 that limitation. I am not going to maintain my objection.

Mr. Korfist says it is bad.

The Court: Why do you think it is bad?

Mr. Korfist: Because the evidence has been going on all through this trial on the question of minimum admission prices.

The Court: This has nothing to do with the evidence; this has to do with the complaint.

Mr. Korfist: It is not so alleged is it?

The Court: Yes. You allege they set up this so-called system of release.

Mr. McConnell: Well, I think, together with my instructions, that we have covered it.

The Court: Well, all right.

Now, No. 11 is the one that is next.

Mr. O'Brien: How does it start, No. 11?

The Court: "The burden of proof in this case is upon the plaintiffs—"

Mr. McConnell: No. 11?

The Court: Yes? That is a long one.

Mr. McConnell: Isn't that the one we just had?

2583 The Court: No, that was 10. You turned the two of them over when you were handling the two of them there.

Mr. McConnell: Yes, I have been—

The Court: 11 is the one now.

Mr. McConnell: Yes, 11 is the one I was talking about all the time. I thought 10—what is 10?

(Thereupon the Court and counsel considered defendant's tendered instruction No. 11, in words and figures as follows:)

The burden of proof in this case is upon the plaintiffs

and, in order to recover from the defendants, the plaintiffs must prove the material and essential elements of their case by a preponderance of greater weight of the evidence.

The first material and essential element of the plaintiffs' case which the plaintiffs must so prove is that the defendants or some of them agreed, combined or conspired together to accomplish one or more of the alleged objects charged by the plaintiffs.

The second material and essential element of the
2584 plaintiffs' case which the plaintiffs must so prove is that the alleged objects of any such alleged agreement, combination or conspiracy constituted an unreasonable restraint of trade or commerce.

The third material and essential element which the plaintiffs must so prove is that as a direct and proximate result of some act or acts done by the defendants or some of them in furtherance of such alleged agreement, combination or conspiracy, the plaintiffs have been injured in their business or property.

If you find that the preponderance or greater weight of the evidence as to any of these material and essential elements of the plaintiff's case is with the defendants, or if you find that the evidence as to any of such material and essential elements is so evenly balanced that you cannot determine upon which side the preponderance or greater weight thereof lies, then, in either of such events, your verdict should be for the defendants.

Mr. McConnell: I don't see anything wrong with that instruction. That's all right.

Mr. O'Brien: All right.

2585 The Court: Now, we are up to 12:

(Thereupon the Court and counsel considered defendants' tendered instruction No. 12, in words and figures as follows:)

A conspiracy is an agreement, express or implied, between two or more persons to do an illegal act or to do a legal act in an illegal manner. It is a combination by two or more persons to accomplish an unlawful purpose by concerted action. The essence of conspiracy is the unlawful combination, association or agreement. In order to establish the existence of a conspiracy the plaintiffs must show by a preponderance or greater weight of the evidence that the minds of the defendants, or some of them, united in a common agreement or design. Such agreement need not be

formal, nor established by direct evidence, but may be established by circumstantial evidence. If, however, from the facts and circumstances shown by the evidence it is as reasonable to draw a conclusion consistent with innocence as one that imputes illegality, then the former must be adopted.

2586 The Court: What is wrong about that?

Mr. McConnell: That is all right.

The Court: Now, 13?

(Thereupon the Court and counsel considered defendants' tendered instruction No. 13, in words and figures as follows:)

Similar or identical action on the parts of two or more of the defendants does not necessarily show any agreement, combination, concert of action or common design among them, but may be consistent with each having acted independently of the others. Such similar or identical action is simply a circumstance which may be taken into consideration, along with all of the other facts and circumstances shown by the evidence, in determining whether there was any agreement, combination, concert of action or common design among the defendants or some of them.

The Court: All right?

Mr. McConnell: All right.

2587 The Court: Now, 14.

(Thereupon the Court and counsel considered defendants' tendered instruction No. 14, in words and figures as follows:)

The motion picture films involved in this case were the property at all times of the producers or distributors of such films and were copyrighted articles. The owner of a copyright owns an exclusive right to reproduce or exhibit the copyrighted article. The owner of such a copyright may exercise his exclusive right to reproduce or exhibit the article himself or he may authorize others to do so by means of a license, upon such lawful terms and conditions as the owner may prescribe. It is lawful and proper for the owner of a copyright on a motion picture, film, acting alone and without agreement, combination or conspiracy with others, to license the exhibition of such film only at such places and at such times and at such minimum admission prices as may be set forth in the license agreement.

Mr. McConnell: Now, I object to this, for the grounds that I mentioned before, that—

2588 The Court: It just has to do with the individuals—

Mr. O'Brien: You have got a very strong instruction on this subject, and we have a right to counterbalance that.

The Court: This instructs that an individual may handle his copyright as he sees fit.

Mr. McConnell: Well, that's all right. I don't have any objection.

The Court: Now, we are on 15:

(Thereupon the Court and counsel considered defendants' tendered instruction No. 15, in words and figures as follows:)

The existence in Chicago and its environs of a so-called "system of release" consisting of consecutive periods or weeks of release in which motion picture theatres are licensed from time to time to exhibit motion picture film, is not in itself unlawful,

If you find from the evidence that such "system of release" was maintained by the defendants or some of them by agreement, combination, or conspiracy and that such system of release was an unreasonable restraint of
2589 trade and commerce in motion picture films, then such "system of release" was unlawful. If, however, you find from the evidence that such "system of release" was only the result of the nature of the business of distributing and exhibiting motion picture films and that it developed out of the independent actions of separate distributors and exhibitors, each attempting to conduct its business in the manner most beneficial to it, and without any agreement, combination or conspiracy among them, or that, in view of the nature of the business, such a "system of release" was not an unreasonable restraint upon trade or commerce in motion picture films, then such "system of release" was entirely lawful.

Mr. McConnell: All right.

The Court: That's all right.

(Thereupon the Court and counsel considered defendants' tendered instruction No. 16, in words and figures as follows:)

Each distributor defendant, acting alone, has the right to select its own customers and to license them to ex-
2590 hibit its films in such runs and with such priorities of run and clearances over others as it believes will produce for it the greatest aggregate amount of license fees.

and this it may do regardless of whether other distributors license corresponding runs of their films to the same or different customers.

The Court: 16—that's merely saying a distributor may act individually, without violating the law.

Mr. O'Brien: Is that: "Each distributor defendant"—

Mr. Seeley: Yes.

The Court: Yes,—"acting alone".

Mr. McConnell: Well, I think this last three lines is misleading. And it doesn't—it is all stated prior to that time. It says:

"and this it may do regardless of whether other distributors license corresponding runs of their films to the same or different customers."

Mr. Seeley: I would just as soon that went out. I think that is covered by other instructions.

The Court: The last three lines go out?

Mr. Seeley: Yes.

2591 (Said defendants' tendered instruction no. 16, as so amended and to be given by agreement, being as follows:)

Each distributor defendant, acting alone, has the right to select its own customers and to license them to exhibit its films in such runs and with such priorities of run and clearance over others as it believes will produce for it the greatest aggregate amount of license fees.

The Court: All right. Now, we are on 17?

(Thereupon the Court and counsel considered defendants' tendered instruction no. 17, in words and figures as follows:)

The practice of granting priorities of run and clearance by distributors to exhibitors is lawful, provided such priorities of run and clearances are granted by each distributor independently and are not fixed or determined by agreement, combination or conspiracy among two or more of such distributors.

Mr. McConnell: That's all right.

The Court: All right. Now, 18.

2592 (Thereupon the Court and counsel considered defendants' tendered instruction no. 18, in words and figures as follows:)

Each defendant distributor, acting independently, having selected a customer to which it desires to license a prior run of its films, has a right to grant such run to that cus-

tomer together with priority of run and clearance over competing theatres, without offering the same run to other possible customers and before entering into contracts for subsequent runs of the same films.

Mr. McConnell: Well, "acting independently, and not in the course of a combination, conspiracy"—well, "a combination or a conspiracy."

Mr. Seeley: All right.

(Said defendants' tendered instruction no. 18, as so amended and to be given by agreement, being as follows:)

Each defendant distributor, acting independently, and not in the course of a combination or conspiracy, having selected a customer to which it desires to license a prior run of its films, has a right to grant such run to that customer

2593 together with priority of run and clearance over competing theatres, without offering the same run to other possible customers and before entering into contracts for subsequent runs of the same films.

(Thereupon the Court and counsel considered defendants' tendered instruction no. 19, in words and figures as follows:)

Each exhibitor defendant, acting alone, has the right to bargain for and obtain for its theatres licenses to exhibit films in such runs and with such priorities of run and clearances over other theatres as it believes are most advantageous to it, and it is not unlawful for one of such exhibitors, acting alone, to bargain for and obtain the same runs, priorities of run and clearances for its theatres from each distributor with which it does business.

Mr. McConnell: I would suggest here, again, it is not unlawful when such exhibitors, acting alone, and not in the course—

Mr. Seeley: Which one are we on now?

Mr. O'Brien: 19.

2594 Mr. McConnell: 19—"and not in the course of a combination or conspiracy".

Mr. Seeley: All right.

The Court: And not what?

Mr. McConnell: "Acting alone, and not in the course"—I am on the third line fron the bottom—"such exhibitors, acting alone, and not in the course of a conspiracy or a combination.

(Said defendants' tendered instruction no. 19, as so amended and to be given by agreement, being as follows:)

Each exhibitor defendant, acting alone, and not in the

course of a combination or conspiracy, has the right to bargain for and obtain for its theatres licenses to exhibit films in such runs and with such priorities of run and clearances over other theatres as it believes are most advantageous to it, and it is not unlawful for one of such exhibitors, acting alone, and not in the course of a combination or conspiracy, to bargain for and obtain the same runs, priorities of run and clearances for its theatres from each distributor with which it does business.

2595 (Thereupon the Court and counsel considered defendants' tendered instruction no. 20, in words and figures as follows:)

The action of the defendant exhibitors in introducing double feature programs into their theatres at or about the time of the acquisition of the Jackson Park Theatre by the plaintiffs was not in itself unlawful, even though you may find that it had the effect of forcing the plaintiffs to introduce double feature programs in their theatre.

If you find from the evidence that the defendant exhibitors so introduced double feature programs in their theatres by agreement, combination or conspiracy between them or among them and the distributor defendants, for the purpose or with the effect of injuring competitors, then such action was unlawful.

If, however, you find from the evidence that each of the defendant exhibitors so introduced double feature programs into its theaters independently, and without any agreement, combination or conspiracy between them or among them and the distributor defendants, then such action by each of them was entirely lawful.

2596 Mr. McConnell: I have no objection to 20.

The Court: The next one is 21, then.

(Thereupon the Court and counsel considered defendants' tendered instruction no. 21, in words and figures as follows:)

There are two kinds of evidence; direct and circumstantial. Direct evidence is that sort of evidence by which a fact is proved directly, and without inference from other facts. Circumstantial evidence is that sort of evidence by which an inference of an unknown fact is drawn from the existence of known facts. In arriving at your verdict, you are to consider all of the evidence, both direct and circumstantial.

Before a fact sought to be established by the plaintiffs can be said to have been proved by circumstantial evidence

alone, it is necessary not only that the circumstances proved by the evidence shall reasonable give rise to an inference of such fact, but also that no other equally reasonable inference can be drawn from the same circumstances. If two equally reasonable inferences can be drawn from cir-
2597 cumstances proved by the evidence, one consistent with the fact sought to be proved and the other inconsistent therewith, you should not infer the fact sought to be proved from such circumstances alone. Moreover, when the plaintiffs' right of recovery depends upon the existence of a particular fact, such as conspiracy, which must be inferred from proven facts, it is not permissible to make such an inference in the face of positive and otherwise uncontradicted testimony of unimpeached witnesses consistent with the facts actually proved, from which testimony it affirmatively appears that the fact sought to be inferred did not exist.

Mr. McConnell: Well, I think this—the last four lines of this are not a correct statement of the law.

Mr. Seeley: It is a word-for-word quotation from the Pennsylvania Railroad case in the United States Supreme Court, Pennsylvania Railroad against Chamberlain. It is the bible of conspiracy law—or of circumstantial evidence law.

Mr. McConnell: Well, a witness—a jury is always free to conclude the testimony of a witness is not worthy of belief.

2598 Mr. Seeley: Sure.

Mr. McConnell: Regardless of whether or not it is unimpeached; and you say it is not permissile to make such an inference in the face of positive and otherwise uncontradicted testimony.

Mr. Seeley: That is what the Supreme Court said.

Mr. McConnell: Inconsistent with the facts actually proved.

Mr. Seeley: In other words, the jury has got to have some reason, to simply throw out direct evidence and rely on circumstances. They have got to believe—

Mr. McConnell: Well, suppose the jury infers a conspiracy here, and is convinced of it in their own mind; and you have a dozen witnesses here, who are not impeached in the sense of being impeached by documentary evidence, but the jury prefers to believe the physical facts rather than your oral testimony.

Mr. Seeley: Well, you are not reading all of it, Tom. It says "consistent with the facts actually proved"—in other words, the direct testimony must be consistent with the circumstantial evidence. That makes it all right, and obviates your objection.

Mr. McConnell: I know, but

2599 "when the plaintiffs' right of recovery depends upon the existence of a particular fact, such as conspiracy, which must be inferred from proven facts, it is not permissible to make such an inference"—

certainly it is permissible for the jury to make that inference.

Mr. Seeley: Go on and read the rest of it; it all goes together.

Mr. McConnell: —"in the face of positive and otherwise uncontradicted testimony of unimpeached witnesses consistent with the facts actually proved."

Mr. O'Brien: That is that idea that the Judge mentioned.

The Court: Now, if they don't want to believe the witnesses who are testifying along that line they don't have to, and a situation is created where no harm is done to you.

Mr. McConnell: I think that instruction gives the impression to the jury that if they have a witness who has not been impeached, that they have to follow the testimony of the witness. And I object to it for that reason.

2600 The Court: That isn't the way I read it. It says "the testimony of an unimpeached witness consistent with the facts actually proved."

All right, we will give 21.

Now, here is 22:

(Thereupon the Court and counsel considered defendants' tendered instruction No. 22, in words and figures as follows:)

If you find from the evidence that the plaintiffs have failed to establish by a preponderance or a greater weight of the evidence that the defendants, or some of them, agreed, combined or conspired to accomplish one of the objects charged by the plaintiffs, or if you find that the alleged object of any such alleged agreement, combination or conspiracy was not an unreasonable restraint of trade or commerce in motion picture films, or if you so find that the plaintiffs have failed to establish that they were injured in

their property or business by some act or acts of the defendants done pursuant to such alleged agreement, combination or conspiracy, then it is unnecessary for you to consider the question of damages.

If, however, you find from a preponderance or
2601 greater weight of the evidence that the defendants have agreed, combined or conspired to accomplish one or more of the objects charged by the plaintiffs and that the object of such alleged agreement, combination or conspiracy unreasonably restrained trade or commerce in motion picture films, and that in pursuance thereof the defendants have committed acts which have injured the plaintiffs in their business or property, then you must find from the evidence the amount of the damages, if any, suffered by the plaintiffs as a direct result of such injury.

The damages, if any, which you properly may take into consideration in arriving at your verdict, if you find that the plaintiffs have established any right ot recover damages, are limited to those actual damages, if any, the amount of which can be determined from the evidence, and do not include claimed damages, if any, which are merely speculative, remote or uncertain. They must be proved by facts from which their existence is logically inferable and cannot be supplied by conjecture. The burden is upon the plaintiffs to prove not only the amount of such claimed damages, but the fact that they resulted directly and proxi-
2602 mately from acts of the defendants, if any, done pursuant to the alleged agreement, combination or conspiracy. The burden is not upon the defendants to show that such claimed damages, if any, may have resulted from some other cause.

Mr. McConnell: We have in another instruction given on that, haven't we? I think the Court granted our instruction—

The Court: You have an instruction on proof, where you don't have to prove certain things.

Mr. McConnell: That's the one I was thinking of, your Honor.

Mr. Seeley: He had an instruction that the proof doesn't have to be—

Mr. O'Brien: Exact.

Mr. Seeley: (Continuing.) —exact, which is true, and could properly follow this instruction.

The Court: I thought he had an instruction—yes, your instruction 4.

Mr. O'Brien: Yes, that's right.

Mr. McConnell: That takes care of it. Those two together, I think, cover it.

The Court: We will give 22, then.

2603 Now, 23:

(Thereupon the Court and counsel considered defendants' tendered instruction no. 23, in words and figures as follows:)

In no event are you to assess damages against the defendants or any of them in this case by reason of any loss or damage which the plaintiffs claim to have suffered which did not result directly and proximately from something done by one or more of the defendants pursuant to an unlawful conspiracy among the defendants or some of them. In on event should you assess as damages against the defendant or any of them any loss or damage claimed to have been suffered by the plaintiffs which resulted from the fact that other distributors, not defendants in this case, failed or refused to license the plaintiffs' theatre except in first week of general release. In on event could you assess as damages against the defendants or any of them in this case any claimed loss or damage resulting from the introduction of double features in Chicago motion picture theatres in 1936 if you find that such double features were not instituted as the result of

2604 any agreement, combination or conspiracy among the defendants or any of them.

Mr. McConnell: Which is 23?

The Court: "In on event are you to assess damages"—22 has two pages, and 23—

Mr. Korfist: Begins with the statute?

The Court: No—"In no event are you to assess damages against any of the defendants in this case".

Mr. O'Brien: I have that, too.

The Court: How does that differ from the one you have just given?

Mr. McConnell: It seems to me we have had so many instructions on damages, this is enough.

Mr. O'Brien: Well, this is a special instruction, obviously—

The Court: Sir?

Mr. O'Brien: This is special; it goes to acts of other distributors, not defendants.

Mr. McConnell: Well, that brings in that other ques-

tion, which we decided to leave alone in our instructions. I object to this instruction.

Mr. O'Brien: Well, it is not a question of—we don't deny your right to sue any two or more co-conspira-
2605 tors, but when it gets to proof of damages, if any, you certainly can't charge any distributor here with loss on pictures furnished by someone else.

Mr. McConnell: Well, I object to this instruction on the ground that we have already instructed the jury that damages are limited to those proximately caused from the injury. This is a particularized instruction, which doesn't go to all the elements of the damage.

The Court: I will sustain your objection to 23.

Mr. Seeley: We except to the Court's failure to give it.

The Court: Yes, sir.

Now, you have another one:

(Thereupon the Court and counsel considered defendants' tendered instruction no. 23½, in words and figures as follows:)

The statute under which this action was brought provides that any person who shall be injured in his business or property by reason of anything forbidden in the anti trust laws shall recover three-fold the damages sustained by him and the costs of the suit, including a reason-
2606 able attorney's fee. However, if you should find for the plaintiffs it would be for the court, in carrying out the provisions of this statute, to treble the amount of damages; that is to say, such verdict, if any, as might be rendered by you in favor of the plaintiffs, when entered by the Court will be multiplied by three and a judgment entered for such treble damages. Your verdict, if it be for the plaintiffs, will be limited to the actual damage, if any, which the evidence shows that the plaintiffs have sustained, and the fact that the court may treble the damages found by the jury should not be taken into account in fixing the amount thereof, if any. Furthermore, the question of costs and attorney's fees, if they are to be allowed, are matters that will be determined by the Court.

The Court: You didn't have it numbered; you had it between 23 and 24; make it 23½?

Mr. O'Brien: How does it start, your Honor?

The Court: "The statute under which this action was brought provides"—

Mr. O'Brien: Yes, number it 23½.

Mr. Seeley: Yes.

Mr. McConnell: Well, you have already instructed
2607 the jury, if the Court please, by Mr. Seeley's reading of the statute.

The Court: Yes, but this merely tells them what treble damages is.

Mr. O'Brien: That it is up to the Court, and not to the jury.

Mr. Seeley: The jury might be confused by the language of the statute as to whether they are to treble the damages or the Judge.

The Court: Yes.

Mr. Seeley: And the only purpose of this is to make that clear to them.

Mr. McConnell: All right.

The Court: That is all this instruction does, is tells them all they are to do is to bring in the amount of the damages, and the Court fixes the costs and the attorney's fees, if any.

Mr. Seeley: Yes.

The Court: Now, No. 24.

2608 (Thereupon the Court and counsel considered defendants' instruction no. 24, in words and figures as follows:

This suit was commenced on July 28, 1942. While the plaintiffs have been permitted to introduce evidence going back over a long period of years, in order that they might attempt to show the alleged background and origin of any claimed contract, combination, conspiracy, monopoly or attempted monopoly among the defendants, they cannot recover anything in this suit unless you believe they have proved by a preponderance or greater weight of the evidence that an unlawful contract, combination, conspiracy, monopoly, or attempt to monopolize among the defendants, or some of them, existed within the five years immediately preceding the filing of this suit, or after July 28, 1937, and that, as a result of something done by the defendants after July 28, 1937, plaintiffs were injured in their business or property. The damages, if any, which the plaintiffs can recover, if you believe that they have established the other material and essential elements of their case by a preponderance or greater weight of the evidence, are limited to those resulting from acts done by

the defendants within the period of five years im-
2609 mediately preceding the filing of this suit.

The Court does not mean by anything in these instructions to intimate that the plaintiffs have or have not established a right to recover damages from the defendants, but you must determine that question from the evidence introduced at the trial, under the law as given to you in these instructions.

Mr. O'Brien: That is the statute of limitations. Your Honor has already ruled on that, I believe.

Mr. McConnell: I have no objection to that.

The Court: All right.

Now, what about 25?

(Thereupon the Court and counsel considered defendants' tendered instruction no. 25, in words and figures as follows:)

The mere fact that the plaintiffs in this case have filed a complaint which charges conspiracy, and that the same charge has been made against all of the defendants,
2610 is entitled to no weight whatever as evidence that the defendants or any of them are guilty as charged. You should consider the evidence with respect to each defendant independently, to determine whether or not that particular defendant is guilty as charged. Your verdict need not necessarily be the same as to all of the defendants, except that you cannot find that there was a conspiracy unless you find that there were at least two conspirators.

The Court: This one is just saying you must prove each one guilty or else they are not to be held.

Mr. McConnell: That is all right.

The Court: Now, let's see these three that we laid aside for you, and see if they are covered.

2611 (Thereupon the Court and counsel reconsidered plaintiffs' tendered instruction no. 18, in words and figures as follows:)

The Court instructs you that in determining what facts are proved in this case you should carefully consider all the evidence given before you with all the circumstances of the transactions in question as detailed by the witnesses and you may find any fact to be proved which you think may be rightfully and reasonably inferred from the evidence given in the case, although there may be no direct evidence or testimony as to such facts.

The Court: Now, that is your 18.

Mr. O'Brien: I think that is already covered.

The Court: That is under the circumstantial evidence, yes.

Mr. McConnell: Is it covered under circumstantial evidence?

Mr. Korfist: I think it is more of an inference than circumstantial evidence. It is the difference between the two.

Mr. Adcock: Which is that?

Mr. O'Brien: Plaintiff's 18.

2612 Mr. Adcock: That is out?

Mr. O'Brien: No, we are just discussing it.

Mr. McConnell: I think that is an instruction that is necessary to clarify that circumstantial evidence instruction, if the Court please, because this tells the jury they can infer from the evidence—

Mr. O'Brien: Well, we already have instructions on inferences and so on, in great detail—much better expressed than this.

Mr. McConnell: I don't think we have on this.

Mr. O'Brien: I don't know what this means.

Mr. Seeley: It looks cumulative to me.

Mr. McConnell: I think that is a good instruction, if the Court please, and should be given.

The Court: Look at Mr. Seeley's instruction 21:

"There are two kinds of evidence, direct and circumstantial. Direct evidence is that sort of evidence by which a fact is proved directly, and without inference from other facts."

You are talking about an inference here.

Mr. McConnell: Yes, but this doesn't—his instruction doesn't cover this.

2613 Mr. O'Brien: It says the jury must take both direct and circumstantial into consideration. What other kind is there?

Mr. McConnell: Well, that could go right along with his instruction; and I think it would clarify his instruction. It is only a short instruction, and it is good law.

The Court: All right, we will give your No. 18.

Now, here is no. 20:

(Thereupon the Court and counsel reconsidered plaintiffs' tendered instruction no. 20, in words and figures as follows:)

The Court instructs you that when the evidence is heard,

jurors have the right to test its weight by their knowledge and experience and their judgment derived from experience, observation and reflection. You are not bound to regard evidence precisely as given, but may consider its truth and weight by your knowledge of human beings, the affairs of life and the motives which influence persons. These are all proper and legitimate means of arriving at the truth in determining the issues in this case.

2614 The Court: Is it necessary that that instruction be given? I don't think that adds anything to it.

Mr. McConnell: We will withdraw that one.

(Said plaintiffs' tendered instruction No. 20 is thereupon withdrawn by counsel for plaintiffs.)

The Court: Now, the other one, about the preponderance and the credibility of the witnesses—I think that has been covered by this instruction Mr. Seeley had.

(Thereupon the Court and counsel reconsidered plaintiffs' tendered instruction No. 21, in words and figures as follows:)

The Court instructs you that the plaintiffs must establish their case by a preponderance of the evidence. This preponderance, however, is not alone necessarily determined by the number of witnesses testifying to a particular fact or state of facts. In determining upon which side the preponderance of the evidence is, the jury should take into consideration the opportunities of the several witnesses for seeing and knowing the things about which they testify; their conduct and demeanor while testifying; their interest

2615 or lack of interest, if any, in the result of the case; their relation or connection, if any, between the witnesses and the parties; the apparent consistency, fairness and congruity of the evidence; the probability or improbability of the truth of their several statements, in view of all the other evidence, facts and circumstances proved on the trial; and from all these facts determine on which side is the weight or preponderance of the evidence.

Mr. O'Brien: Yes.

Mr. Seeley: 21?

Mr. O'Brien: Yes.

Mr. Adcock: Is that withdrawn?

Mr. McConnell: Except that this says it is not alone necessarily determined by the number of witnesses testifying to a particular fact or state of facts.

The Court: That is the only thing he left out of his.

Mr. O'Brien: Well, that doesn't do you any harm, then.

Mr. McConnell: No? You descended on us like a swarm of locusts, Mr. O'Brien, with all those witnesses.

Mr. O'Brien: Oh, you mean with all the witnesses?

2616 Mr. McConnell: The number of witnesses is very important in this case, I think.

Mr. Seeley: Well, let's put that sentence in.

Mr. McConnell: All right. Where is that?

The Court: That is—I think that is your No. 4, isn't it? "The jury are the sole judges of the credibility"—Yes.

Mr. Seeley: Yes. Put it right in after the second paragraph in the middle of the page.

Mr. McConnell: Starting where?

Mr. Seeley: Wait a minute—where is your instruction? I gave mine to the court reporter.

Mr. McConnell: "Is not alone necessarily determined by the number of witnesses testifying to a particular fact or state of facts."

Mr. Seeley: I think Mr. McConnell's instruction probably is good, and supplements mine. I didn't go very much into the definition of preponderance of evidence.

Mr. Korfist: There is no definition of preponderance.

Mr. Seeley: His statement about his having to prove his case by the preponderance—

2617 The Court: I want to say this: That I think these instructions that Mr. Seeley has prepared here have been eminently fair, so far as not only his side is concerned, but he has been very fair so far as the plaintiff is concerned.

Mr. McConnell: I think so, too.

The Court: So we will give 21, then, McConnell's 21.

Mr. McConnell: That's right.

The Court: Now, we have a couple more here that we haven't finished with yet.

Mr. McConnell: We have Mr. Adcock's now.

The Court: Yes, sir.

The only Seeley instructions, the two instructions we laid aside were 5 and 23.

Mr. McConnell: Have I got copies of yours?

Mr. Adcock: I think you have.

First, we had probably better number them.

Mr. O'Brien: Let's number these 26 and up, shall we?

The Court: Well, which are you going to number 26?

The first one—the short one?

2618 Mr. Adcock: Yes.

(Thereupon the Court and counsel considered defendants' tendered instruction no. 26, in words and figures as follows:)

The jury are instructed that if plaintiffs voluntarily participated in the alleged system of releasing pictures for exhibition in motion picture theatres in Chicago, of which system complaint is made by plaintiffs, and under said system made contracts for film giving to their theatre a run ahead of and clearances over other theatres, in competition with plaintiff's theatre, and with minimum admissions price for the same and subsequent runs, then plaintiffs are estopped to complain in this case of said system of releases with runs, clearances and minimum admission prices.

The Court: We discussed that. What change was that you suggested there, Mr. —

Mr. Adcock: There was no change.

The Court: Oh, that's right; that went along with his other one. Now, in his other instructions, he has them in here two ways, haven't you?

Mr. Adcock: Well, there are two following, two
2619 instructions which follow here, which I think are correct.

Mr. McConnell: Wait a minute. Now, on this 26, I understand from that that we were going to rewrite—isn't that the one we were going to rewrite?

Mr. Adcock: No.

Mr. Seeley: It was yours on the same subject that was going to be rewritten, as I understand it.

Mr. Adcock. That's right.

Mr. McConnell: "The jury are instructed that"—

The Court: Your No. 6 you were going to rewrite.

Mr. McConnell: Well, this instruction—it has to be more than "voluntarily". They must show knowledge.

Mr. Adcock: Well, you have covered that in your other—

Mr. McConnell: Have I?

Mr. Adcock: It was understood that this one would be given, and yours was to be modified, in fact, rewritten.

The Court: No, that is a different instruction.

Mr. McConnell: This doesn't meet the rule in the Eastman Kodak case.

Mr. Adcock: Which one are you looking at?

Mr. McConnell: I am looking at your 26, which is your first instruction.

Mr. Adcock: Yes.

The Court: Well, what instruction have you got here, where you were going to rewrite it, that had to do with your estoppel? It is your No. 5.

Mr. McConnell: Yes, that was No. 5.

The Court: "Plaintiffs are not estopped to complain against defendants"—isn't that the one?

Mr. Korfist: That is right.

The Court: That's your No. 5.

Mr. Korfist: Correct.

The Court: Now, what is wrong with this, did you say?

Mr. McConnell: Well, it has left out here the point that is brought out in the Eastman Kodak case. In this Eastman Kodak case they said they must show they not merely bought goods from the defendant because of a business necessity, but with a knowledge of defendant's purpose to monopolize. Now, this instruction should have that.

"The jury are instructed that if plaintiffs knowingly and voluntarily"—

would be my suggestion.

Mr. Adcock: Do you want a "knowingly" in there?

Mr. McConnell: Yes, "knowingly and voluntarily".

Mr. Adcock: That's all right.

The Court: "Knowingly and voluntarily"?

Mr. Adcock: I would hardly expect it would be voluntary without knowledge.

Mr. O'Brien: You have that word "estopped" in there.

Mr. McConnell: Do you think that jury is going to know what "estopped" means?

Mr. O'Brien: I was going to say "are barred, prevented, or precluded" from complaining, something like that.

Mr. McConnell: Well, we have got it in both instructions now, so I think it is as broad as it is long.

The Court: Oh, I think this jury knows what estoppel means.

Mr. O'Brien: All right.

(Said defendants' tendered instruction no. 26, as so amended and to be given by agreement, being as follows:)

The jury are instructed that if plaintiffs knowingly and voluntarily participated

The Court: Now, which is 27?

(Thereupon the Court and counsel considered defendants' tendered instruction no. 27, in words and figures as follows:)

The jury are instructed that the plaintiffs cannot recover damage on the basis of profits which the Jackson Park Theatre had earned while it was playing pictures in the run or playing position with clearances and with minimum admission prices allegedly provided for and fixed by the system of release alleged to have been established, maintained and continued illegally by the defendants, to the extent that such profits had been increased by the theatres playing in such run or playing position and exceeded those in a normal business. And the jury are further instructed that such profits must be reduced to the basis of normal profits if it appears from a preponderance of all the evidence that such profits may be so reduced. If, however, from all the evidence such profits cannot reasonably be so reduced to the basis of normal profits, then the jury must find such issue for the defendants.

Mr. McConnell: Well, now, this last sentence is
2623 directly contrary to the Parchment case.

Have we got the Parchment case here?

That last sentence I object to.

The Court: Is that last sentence necessary?

Mr. Adcock: "If, however, from all the evidence such profits cannot reasonably be so reduced to the basis of normal profits, then the jury must find such issue for the defendants."

Mr. O'Brien: I think I would agree that could go out.

Mr. Adcock: I think that is entirely correct.

The Court: Is that necessary to go in there?

Mr. Adcock: I think so, yes; it tells the jury what to do about it.

Mr. McConnell: All right—I am reading from the Eastman Kodak case, and the Parchment case was even stronger:

"A defendant whose wrongful conduct has rendered difficult the ascertainment of the precise damages suffered by the plaintiff is not entitled to complain, that they cannot be measured with the same exactness and precision as would otherwise be possible."

2624 Now, this instruction tells the jury if they can't determine just what is caused by the wrong here, be-

cause of the wrongful acts, that therefore they can't recover any damages.

Mr. Adcock: No, it says if they cannot reasonably determine that, then the issues must be—

Mr. McConnell: Then you are taking advantage of your own system.

Mr. Adcock: No, no.

"However, if from all the evidence such profits cannot reasonably be so reduced to the basis of normal profits, then the jury must find such issue for the defendants."

Mr. McConnell: You are throwing the burden on us of showing how much the profits were reduced by your illegal system, which is just contrary to what the Parchment case holds.

Mr. Adcock: No, the parchment case doesn't hold that at all.

This language from the Eastman Kodak case, your Honor, 273 U. S., is what I have used:

"And further, that even if the plaintiff had not been a party to the monopoly, it could not recover damage
2625 on the basis of the profits which it earned while a customer of the defendant, to the extent that they had been increased by the monopoly and exceeded those in the normal business, but they must be reduced to the basis of normal profits."

Now, that instruction is intended to paraphrase that language as far as it can be applied to this case.

And in the Rankin case—

The Court: Well, I don't see much difference between the last sentence and the one next to it. You tell them in the sentence there, next to the last—

Mr. O'Brien: I don't see, Ed, why you shouldn't drop the last sentence. I think that last sentence could go out.

The Court: I think you have all you want in the next to the last sentence, Mr. Adcock.

Mr. Adcock: Well, that's right.

The Court: We will strike out the last sentence, then.

Mr. Adcock: The last sentence. I desire to amend it in that respect.

2626 (Said defendants' tendered instruction no. 27, as so amended and to be given by agreement, being as follows:)

The jury are instructed ~~that~~ the plaintiffs cannot recover damage on the basis of profits which the ~~Jackson~~ Park

Theatre had earned while it was playing pictures in the run or playing position with clearances and with minimum admission prices allegedly provided for and fixed by the system of release alleged to have been established, maintained and continued illegally by the defendants, to the extent that such profits had been increased by the theatres playing in such run or playing position and exceeded those in a normal business. And the jury are further instructed that such profits must be reduced to the basis of normal profits if it appears from a preponderance of all the evidence that such profits may be so reduced.

The Court: Now, your next is 28?

Mr. Adcock: Yes.

(Thereupon the Court and counsel considered defendants' tendered instruction no. 28, in words and figures as follows:)

2627 The plaintiffs charge in their complaint that the runs granted by the defendant distributors and each of them to certain theatres operated by Balaban & Katz Corporation and to certain other theatres operated by Warner Brothers Circuit Management Corporation are discriminatory and arbitrary and illegally discriminate against the business of plaintiffs of operating the Jackson Park Theatre.

You are instructed that if you believe from the preponderance or weight of all the evidence that the runs in which the said theatres have played pictures licensed by the defendant distributors during the period from July 28, 1937 to July 28, 1942 were reasonable and not unreasonably discriminatory against the business of plaintiffs in the operation of the Jackson Park Theatre, considering the size, location, character of said theatres, the transportation facilities and the potential drawing power of patronage by said theatres and each of them, as compared with the size, location, character, the transportation facilities and the potential drawing power of patronage, then the jury must find this issue for the defendants.

2628 Mr. Adcock: This is with reference to the issue in their complaint where, your Honor remembers, they alleged in a particular paragraph—

The Court: What is wrong with this instruction?

Mr. McConnell: Just let me read it, and maybe I won't have any objection, Mr. Adcock.

Mr. Adcock: If you will promise not to have—

Mr. McConnell: I think, together with the other instructions, that's all right.

The Court: All right.

What is next, now?

Mr. McConnell: What is the number of this one?

The Court: That one was 28.

Mr. Adcock: That's all right?

(Thereupon the Court and counsel considered defendants' tendered instruction No. 29, in words and figures as follows:)

Plaintiffs seek to recover damages for the alleged acts of defendants on one of two theories, as follows:

(1) The amount of money that plaintiffs' profits in the operation of the Jackson Park Theatre for the five
2629 years from July 28, 1937 to July 28, 1942 were less than they would have been had the gross receipts from admissions and the film rental expense of the Jackson Park Theatre been equal to the amount of the gross receipts from admissions and film rental expense of the Maryland Theatre of the defendant Balaban & Katz Corporation for said five year period.

(2) The amount of money that plaintiffs' profits in the operation of the Jackson Park Theatre for the five years from July 28, 1937 to July 28, 1942, were less than five times the average yearly profits of said theatre for the four year period prior to said July 28, 1937, eliminating estimated "Bank Night" receipts for the year 1936.

The jury are instructed that if they find from a preponderance of all the evidence that plaintiffs have been injured by the alleged acts of defendants, they must choose one or the other of said two theories of determining damage or the amount of damages.

If the jury selects the first theory of determining
2630 damages as above mentioned, they must first find from a preponderance of all the evidence what amount of the gross receipts from admissions and amount of expense of film rental of the Maryland Theatre for the said five year period from July 28, 1937 to July 28, 1942, was derived or resulted from the operation of the Maryland Theatre under normal conditions of free and open competition and not from or as the result of the operation of said theatre in the playing position, under clearances and minimum admission prices allegedly provided by the so-called

system of release and under double feature policy alleged and claimed by the plaintiffs to have been established, maintained and continued by defendants through conspiracy and unlawful agreement, and the jury shall use said gross admissions amount and said film rental expense so to be found by them as the factor from which to calculate the damages for said five year period.

If the jury selects the second theory above mentioned to determine and fix damages, they must first find from a preponderance of all the evidence what if any portion of
2631 the yearly average profits of the operation of the Jackson Park Theatre for the four year period prior (eliminating certain "Bank Night" receipts) to said July 28, 1942 was derived from operation under conditions of free and open competition and not from operation in the playing position, under the clearances and minimum admission prices of the so-called system of release and under double feature policy which plaintiffs allege and claim defendants by conspiracy established, maintained and continued, and the jury shall then use such, if any, portion of said yearly average as the factor from which to determine the damages sought to be recovered by plaintiffs.

(The Court and counsel also considered with this instruction defendants' tendered instructions 30 and 31, in words and figures as follows:)

The plaintiffs seek to recover damages for the alleged acts of defendants on the following theory of measuring damages:

The amount of money that plaintiffs' profits in the operation of the Jackson Park Theatre for the five years from
July 28, 1937 to July 28, 1942, were less than five
2632 times the average yearly profits of said theatre for the four year period prior to said July 28, 1937, eliminating estimated "Bank Night" receipts for the year 1936.

The jury are instructed that if they find from a preponderance of all the evidence that plaintiffs have been injured by the alleged acts of defendants, then they must first find from a preponderance of all the evidence what if any portion of the yearly average profits of the operation of the Jackson Park Theatre for the four year period prior (elminating certain "Bank Night" receipts) to said July 28, 1942 was derived from operation under conditions of

free and open competition and not from operation in the playing position, under the clearances and minimum admission prices of the so-called system of release and under double feature policy which plaintiffs allege and claim defendants by conspiracy established, maintained and continued, and the jury shall then use such, if any, portion of said yearly average as the factor from which to determine the damages sought to be recovered by plaintiffs.

2633 The plaintiffs seek to recover damages for the alleged acts of defendants on the following theory of measuring damages:

The amount of money that plaintiffs' profits in the operation of the Jackson Park Theatre for the five years from July 28, 1937 to July 28, 1942 were less than they would have been had the gross receipts from admissions and the film rental expense of the Jackson Park Theatre been equal to the amount of the gross receipts from admissions and film rental expense of the Maryland Theatre of the defendant Balaban & Katz Corporation for said five year period.

The jury are instructed that if they find from a preponderance of all the evidence that plaintiffs have been injured by the alleged acts of defendants, then they must first find from a preponderance of all the evidence what amount of the gross receipts from admissions and amount of expense of film rental of the Maryland Theatre for the said five year period from July 28, 1937 to July 28, 1942 was derived or resulted from the operation of the Maryland Theatre under normal conditions of free and open

2634 competition and not from or as the result of the operation of said theatre in the playing position, under clearances and minimum admission prices allegedly provided by the so-called system of release, and under double feature policy alleged and claimed by the plaintiffs to have been established, maintained and continued by defendants through conspiracy and unlawful agreement, and the jury shall use said gross admissions amount and said film rental expense so to be found by them as the factor from which to calculate the damages for said five year period.

The Court: Now, these four pages, are they two separate instructions, or are they stating instructions in different language?

Mr. Adcock: Your Honor, because we have two theories of damage here, the first one is on the theory that the jury somehow, I don't know how, will select the theory that it follows. Then the others here—I don't know—there is no instruction as to how they are to select the damages—

The Court: Well, let Mr. McConnell read them—let's see what they are, first. This is No. 29, anyhow.

2635 Mr. McConnell: Is this some more of it?

The Court: Well, I think the last one, I suppose, states in some different language—

Mr. Adcock: No, it is the same language. The next two are just exactly the same. They are only—I understand your Honor is going to deny the motion to make an election, so 29 is the only one.

The Court: What is your objection to that one?

Mr. McConnell: Where does 29 run to, Mr. Adcock? I can't find out.

The Court: The first two pages.

Mr. McConnell: Well, I have the same objection to this that I had to that other instruction, where we took out the last four lines; that it leaves the jury in the position where they can't utilize the basis of damages which we have already had in one of our instructions, on the theory that if it is difficult to compute because of the operation of this conspiracy which we were coerced into joining, that we shouldn't be penalized by that.

The Court: Do you have any disagreement with his statement on the accounting principles that must be followed in order to arrive at what your damage is?

2636 Mr. McConnell: Well, the first I don't have any objection to. It is the last paragraph that I object to.

The Court: The last paragraph, on what page?

Mr. McConnell: On page 2.

The Court: What does that start with?

Mr. McConnell: "If the jury selects the second theory above mentioned to determine and fix damages—"

The Court: Oh, you are down in the last paragraph on page 2?

Mr. McConnell: Page 2.

Mr. McConnell: Page 2.

The Court: All right. Well, now, let's see—

Mr. Adcock: That is just like the preceding one.

Mr. McConnell: Well, it is the one we argued about a minute ago, and struck out the last four lines.

Mr. Adcock: No. No, it isn't.

The Court: Well, I think all he tells them is that they must pick out from the evidence what the facts were on the operation of these theatres.

Mr. Adcock: All the last sentence is that they shall use the factor in determining the damages which they are directed to determine.

Mr. McConnell: Well, I object to that one for the
2637 reason given.

The Court: I think that ought to be given.

Mr. Seeley: I want the record to show, of course, your Honor, that we offer this instruction only after the refusal of our motion to require the plaintiff to elect their theory of damages.

The Court: Well, of course the record will show that.

Mr. Adcock: Yes; that is, the instruction was offered on that theory, yes.

The Court: And these other two pages you don't need at all?

Mr. Adcock: Pardon me?

The Court: These other two pages (referring to Defendants' tendered instructions 30 and 31)—

Mr. Adcock: No.

The Court: You had them separated, so that in the event that motion was allowed and they were compelled to elect, then you would use one or the other?

Mr. Adcock: Yes. You see, the reason I thought there should be an election—when I started drawing this instruction which has just been allowed, I couldn't see how the jury was going to determine unless they had some-
2638 thing before them. Then I commenced to look up some authorities on this question of election: Where there are two theories of damages, it is necessary that they elect. There are a lot of authorities to the effect that where there are two theories, the jury may select the one where the damages are less.

The Court: Now, do we all understand what instructions are going to be given?

Mr. Seeley: I think so.

(Defendants tendered Instructions 30 and 31 are thereupon withdrawn by Mr. Adcock.)

Mr. McConnell: There are two that I am to rewrite, as I understand it.

The Court: There are two that you are to rewrite, yes, number 6 and 24.

Mr. McConnell: That's right, 6 and 24.

Mr. Seeley: Now, in order that there may be a record to show what we have been talking about here, I have asked my reporters—I have given them a set of copies of both the plaintiffs' instructions and the defendants' instructions, and I have asked them in writing this up,
2639 to do it in this way. To show:

"Thereupon the Court and counsel considered plaintiffs' tendered Instruction No. so-and-so, in words and figures as follows:)"

And then to write up the discussion. Otherwise, the record wouldn't show what our comments were about. Do you think that is proper, Mr. McConnell?

Mr. McConnell: That is all right. I have no objection.

Mr. Adcock: And I understand that the objections of any one of counsel are made on behalf of all—that is, of the defendants' counsel.

Mr. O'Brien: Your Honor, I may have an instruction or two, short ones, special instructions of Warner Circuit Management. I haven't made up my mind yet, I haven't had a chance to type them; but I will submit them to counsel early in the morning, if there are any.

The Court: Now, how much time do you folks want to argue?

Mr. O'Brien: How about the opening and closing?

Mr. McConnell: Well, I would say I would want an hour and a half for my opening, at least.

Mr. Seeley: I would like—

2640 Mr. O'Brien: And the closing, how much for your rebuttal?

Mr. McConnell: That depends on you, how long you take, and what I have to answer.

The Court: What do you say, Mr. Seeley?

Mr. Seeley: Well, my own feeling is that in a case of this length and importance there need be no arbitrary limitation upon counsel, because all of us are conscious of the fact that the difficulty is to compress our arguments enough not to bore the jury, and I don't think any of us are going to deliberately make them any longer than we think is necessary.

The Court: Can you finish your argument tomorrow?

Mr. Seeley: I hope so. I don't know—

The Court: So we can instruct the jury Thursday morning?

Mr. Seeley: I don't know that there is any guarantee of it.

Mr. McConnell: I certainly don't see why we couldn't.

Mr. O'Brien: Well, how many working hours are there in a day? There are two and a half hours in the
2641 morning and two and a half hours in the afternoon.

Mr. McConnell says he will take maybe an hour and a half in opening—

Mr. Seeley: The morning is sometimes pretty short, if there are other matters the Court has to take up.

Mr. O'Brien: It may be only four to four and a half hours.

Mr. Seeley: I doubt if we will be entirely finished tomorrow.

Mr. O'Brien: You are going to take an hour and a half to open.

The Court: I am not limiting you. I was just trying to get an idea, because I want—

Mr. Adcock: I was just wondering, your Honor. It seems to me this probably would go over into Thursday. I would like to arrange it, if it could be possible, so that I wouldn't have to make any argument tomorrow, if it could be arranged that way, so that I could appear last so far as our side is concerned, and let me go on Thursday morning, if we could.

The reason is this: That I haven't had an op-
2642 portunity to go over the record, and it will simply mean that I will have to work all night tonight if I do have to go ahead tomorrow.

The Court: Well, if you want an hour and a half to open and these other gentlemen take as long as that, that would be four and a half hours. That is almost as long as we work here.

Mr. O'Brien: I was going to say we haven't gone over the record either. We haven't done anything about it.

Mr. McConnell: We are all in the same fix on that.

The Court: Yes. You are all in the same fix on that.

Mr. O'Brien: I assume the arguments will go in a certain order, and we will arrange the order. But it is very clear now—I don't see how the arguments could be concluded before Thursday; they will certainly go into Thursday.

The Court: Well, I think you should try to finish them Thursday morning, then, because we have a jury here with nine women on it, and we have no place to keep the juries around here.

Mr. Adcock: I wouldn't ask that ordinarily. I would just as soon work all night, under ordinary circum-
2643 stances.

The Court: No, but if you went into Thursday—I don't know how long you want to talk, but between you and Mr. McConnell, I should think you could finish Thursday morning.

Mr. Adcock: Yes.

Mr. McConnell: I don't think there is any question about it.

The Court: Could we let Mr. McConnell talk tomorrow, and Mr. Seeley and Mr. O'Brien talk tomorrow?

Mr. O'Brien: Well, we will have to arrange the order. I don't know enough about the subject—

The Court: It may be that you could arrange it that way, and let Mr. Adcock talk Thursday morning.

Mr. O'Brien: I can see what the order will be.

The Court: You and Seeley flip a coin, then, and see which one of you is going to follow McConnell.

Mr. Seeley: I guess I am, or will be by tomorrow, as ready as I will ever be; so I don't much care from that standpoint.

The Court: We will start at 10:15 in the morning.
2644 Do you get the idea that you will have several forms of verdict here?

The Clerk: I have 20 forms of verdicts.

Mr. O'Brien: Are there that many?

The Clerk: A general "guilty" and "not guilty", and then a "guilty" and "not guilty" as to each defendant. You can look at them and pass them around. (Submitting forms of verdict to counsel.)

The Court: You are going to bring it in in the morning, that motion of yours for a directed verdict?

Mr. Seeley: Yes, sir. I will bring that in in the morning.

Mr. O'Brien: The verdicts look all right to me. Of course, there will be a general verdict.

That is really a day's work, Judge, to get through with those instructions.

The Court: It certainly is. This is the worst part of a case.

Mr. O'Brien: It certainly is. There hasn't been much time to read or study them in advance.

The Court: You don't have much time.

As I said, I think those instructions that Mr. Seeley prepared were just about as fair as they could have
2645 been if the plaintiff had handed them in.

(Thereupon an adjournment was taken to the following day, Wednesday, March 8, 1944, at the hour of 10:15 a.m.)

2646 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption) * *

Before Knoe, J., and J.

Wednesday, March 8th, 1944.
10:15 o'clock A. M.

Court met pursuant to adjournment.

Counsel present:

Mr. McConnell,
Mr. Korfist;
Mr. Adcock,
Mr. Seeley,
Mr. O'Brien.

(And thereupon the following proceedings were had in the presence and hearing of the jury:)

2647 The Court: You were to bring in those two instructions.

Mr. McConnell: Yes, your Honor. We have those.

The Court: The evidence has been completed in this case, ladies and gentlemen, and the lawyers are now going to address the jury and tell you about the evidence from their respective standpoints.

Mr. O'Brien: (Handing documents to the Marshal).

The Court: Mr. O'Brien, are these additional instructions?

Mr. O'Brien: Yes. I said I would have those.

The Court: The other folks are not here yet.

Mr. McConnell: That is right.

I wonder if we could wait until after my argument.

Mr. O'Brien: I have no objection.

Mr. Seeley: Your Honor, I handed the clerk my written motion in this case.

The Court: Yes. Whenever you are ready, Mr. McConnell.

Mr. McConnell: Mr. Adcock isn't here.

The Court: Oh.

Mr. Seeley: I was going to make a record on this.

The Court: The new ones?

Mr. Seeley: The re-written ones.

2648 The Court: Is there any dispute about the re-written ones?

Mr. Seeley: One correction I suggest be made. I have just heard that Mr. O'Brien has agreed that objections will be made after the argument.

The Court: Yes.

Mr. Seeley: Your Honor, the announcement yesterday was 10:15. That is probably why Mr. Adcock is not here.

The Court: I believe that is right, because the other reporter is not here.

(A short delay).

The Court: I guess you may proceed now, Mr. McConnell.

2670 Now, how are we damaged by this thing?

If you people find that there is a system which is illegal because of this price fixing, and because of this suppression of competition, all worked out, to which they have tacitly or otherwise, with knowledge, come to an understanding and gone on and are going forward with and through, then the next question before you is how we are damaged.

On that issue we had an accountant on the stand, Mr. Butler, and he made an analysis of the earnings of the Jackson Park Theatre for a period of five years,

2671 and he eliminated bank night, and when you compare his elimination of bank night with the way the other witness, Mr. Barron, eliminated, you will see that he took out all the increased profits for the year in which bank night was played. Mr. Barron, I think it amounted to four-fifths of the profits, which he took out, so he made a fairer estimate, it seems to me, than Mr. Barron did. He gave them the benefit for the advertising; he made no deductions for the amounts that were paid out for bank night, he disregarded it; he put it aside, took a basis

which did not include that, and from that he concluded the losses from that base, over succeeding years, when this thing was operating against our business, when it was depressing our business, when it was directed against our business, when the purpose of it was to benefit the Loop runs, and depress the subsequent runs.

And the evidence in this case shows, using that same sort of a base, I have computed it for one of these theatres, using that same sort of a base, the Tivoli Theatre increased its earnings, during the same period of time, over $300,000. The system was designed to take money out of
the subsequent run theatre and put it into the prior
2672 run theatre; and it did it, and the evidence is conclusive that it did it.

Of course we are damaged. We were meant to be damaged, and we were damaged. It was directed against our business, and it succeeded.

Now, let me get to this other subsidiary question of C week; and from my point of view, Mrs. Bigelow, when she put herself on that stand, at the beginning of this case, in her testimony she had a clearer conception of what is involved in this lawsuit than anybody else in this case. She said this is not a question of C week. This is a question of being able to buy pictures, and she couldn't understand why she couldn't go in and buy pictures like she bought a hat, and I don't, either.

The testimony was that back in the old days you bought
your pictures and you bid for them against the field.
2673 What is wrong with that? I heard a snicker right in the court room from some one, of a woman's idea of what this should be; and I say to you people that she understood this lawsuit, and she understood the essential features of this lawsuit, and she knew what was back of it, what it was founded on, what it was based on, what it was bottomed on, the right to buy, the right to bid your money for product, against the world. She was sound factually, and she was sound legally; and that is what this lawsuit is about, not about C week, or any other week. It is the right to buy pictures in an open market.

So I say that that is a subsidiary issue, but it is an issue it was an issue in the case, and becomes an issue in the event, and only in the event, as I see it, that you should find, and I don't know how in the world you could find it from the evidence in this case, that this system was reasonable.

2674 Here they admit that Mr. Mager was talking, and Mr. Mager and Mr. Salkin were talking, with Mr. Rose, in 1940, long prior to any lawsuit here, trying to get C week. Why? Why, if he was not trying to get C week, was he talking about it? Mr. Rose is no longer there with that Company. The only gleam of truth that came through in that whole mass of testimony.

2675 I say that is a subsidiary issue in this case, and the only reason I mention it is I am not going to put witnesses on the stand, sponsor them as when they are contradicted, and not get up and defend them.

The main issue, as I say, is the issue which my client, Mrs. Bigelow, raises, the right to buy product free from suppression of the sort of thing that you find revealed here before your eyes in this case.

As I said at the beginning, it is an issue which goes far and beyond the rights of litigants in this case. It is an issue which affects all of us; and I am not just a lawyer here talking for a fee on that issue. There are some lawsuits which have inherent principles in them, and you know that inherent principles are in them.

2676 And I say to you that, over and beyond and above the rights of the litigants in this case, are principles which are eternal, principles of freedom, principles of the right to go out and compete in the open market for the product for your business; principles which you and I, if life is worth anything at all, if life doesn't turn to ashes in our mouth, must affirm and fight for. And I say to you that, no matter who opposes litigants, as long as litigants can get up in court, and stand up on their hind legs and say "No!" to this sort of thing, and fight for it, I have no fear of the outcome of this case, or any other case like it.

2692 Now, motion pictures are no different than that. The distributor has the right to decide the price at which it shall be exhibited, because he owns it. And he doesn't lose that right because he selects others as his agents or licensees to show it for him.

The law does not condemn fixing prices, of course; the law condemns only one thing,—conspiracies to fix prices. What the law condemns is when a man who owns something gives up his right to fix the price and he agrees with someone else and lets someone else have a voice in fixing his price.

When we get to conspiracy, as I shall in the course of this agreement, we can consider price fixing again and see if there is any evidence of a conspiracy to fix prices here. But, lacking conspiracy, there is nothing unlawful, there is nothing extraordinary, there is nothing at all wrong
2693 in the fact that the owners of these films determine the prices at which they shall be shown to the public, at different times and in different places.

Now, it seems to me that my opponent here has used the word "system," a "system" of release, in such a way as to indicate that possibly there is something wrong about a system, that my clients should not have any system in their business.

2706 That would be an insult to your intelligence. There would be no point to it. We have no intention of attributing anything in this case to coincidence.

What we do propose to show is, from the evidence, that each of the distributor defendants has reacted in exactly the same way to exactly the same set of circumstances, for its own benefit alone, just as surely as did the thousand people on the street who raised their umbrellas when it rained. That was no coincidence either. There was a very understandable cause and effect for it. And there is here.

Let's go back just a little into the history of the
2707 theatre business here in Chicago, as shown by the evidence.

When we go back to 1916, when the Jackson Park Theatre was built, we find the business quite different than it is today. There were none of these large, deluxe theatres. There were no different levels of admission prices; everybody charged about the same price, about fifteen cents. And the pictures cost about a tenth of what they do today. And with that, and the lack of some of the technical knowledge we have now, they were probably not worth much more than fifteen cents to see.

We found even then, though, that when a theatre obtained a license to exhibit pictures, it wanted what was called protection in those days. It had a perfectly good reason for not wanting the theatre right across the street to show the same picture the same day, or the next day. And so all of them bought protection on each other—seven days, or fourteen days, the witnesses said. And that protection, of course, was the forerunner of runs and clearances as we know them today. It had some of the

elements of runs and clearances in it, but it didn't
2708 yet have the element of the theatres of greatly varying sizes, and of the different admission prices which came into being as new and bigger theatres were built; and of the vastly increased cost of film entertainment which also grew up within the next fifteen years.

Coming into the period of the 1920's, we see the building of a number of so-called deluxe theatres on the South Side of Chicago. And, of course, that was taking place elsewhere, too. It entirely changed the complexion of the exhibition business.

The Tivoli Theatre, for instance, with its 3200 or 3400 seats, was double the size of any other theatre that had ever been built out there on the South Side. And other theatres not quite so large, but the Avalon with 2400, and the Tower with 3,000, the Jeffery, I believe, with 1800—different sized theatres came in and changed this picture, along with the changing type of motion picture entertainment which the public was demanding.

And, as those theatres were built, there evolved in a
2709 perfectly natural way out of protection definite playing positions for these different theatres.

As long as a theatre was charging the same as its neighbor theatre charged, the problem of playing position wasn't of any great importance. But, once a theatre such as the Tivoli had erected a plant which would attract people at higher admission prices, it was necessary for them to establish themselves as a house in a playing position commensurate with the higher admission prices which they charged. And they did so.

I am not going into the evidence in detail, but you will recall that it was related in some detail by Mr. Salkin, and supplemented by the testimony of others. The fact is, the undisputed fact is that as each one of these theatres came in it obtained for itself a playing position with reference to the others, which was substantially in accord with its size and its location and luxuriousness and all that sort of thing—the things which enabled it to be a higher-priced theatre, and to pay higher film rentals, and to get those playing positions from the different distributors.

2710 Now, none of my clients is in any way responsible for the building of any of those theatres, or for who owns them. RKO happens to own its own theatres here

in the Loop, but aside from that my clients don't own any; and there isn't the slightest evidence that they had anything to do with the erection of any of those theatres or with their changing hands from one to another, or with their now being owned, some of them by Balaban & Katz, and some of them by Warner Brothers.

And I don't know that it makes any difference who owns them. They are the theatres with which my clients have to do business, because they are the only theatres there are in which to exhibit these pictures.

Now, then, take any one of my clients, coming in here and finding the theatres to be what they are, and wanting to license their films to the best advantage, and what do they do? Well, of course, the first place they go is to Balaban & Katz; for a perfectly obvious reason.

Balaban & Katz is by all odds the most desirable
2711 customer for film licenses in Chicago, because of the theatres it owns. And any distributor which is unable to do business in those bigger theatres—not because Balaban & Katz owns them—but because they are the big theatres, is going to lose out on a large portion of the revenue in Chicago.

And the owner of those theatres—and it would be the same no matter who owns them—has a definite policy of operation. Mr. Kommerman testified that they, Balaban & Katz had tried split policies, and it wasn't successful. The way they want to buy pictures, and the way they do buy pictures, is to buy them just the same way, as far as runs and clearances and minimum admission prices are concerned, from every distributor with whom they do business.

Now, I have mentioned Balaban & Katz first only because they own the bigger theatres, to which the distributors go first. But exactly the same thing is true of every theatre in town—including the plaintiffs' Jackson Park Theatre. Let us consider the evidence that supports that statement.

2720 Mr. McConnell: Yes.

The Court: The little one (indicating), you have no objection to that? That is just recopied?

Mr. Seeley: I think he rewrote that as we agreed.

Mr. McConnell: Wait a minute—"arbitrarily and unreasonably or pursuant to a conspiracy"?

Mr. Seeley: No, insert, "and pursuant to a conspiracy among them."

(Correction made by Mr. McConnell as requested.)

Mr. McConnell: Can you read my writing?

The Court: Well, let's see—"and pursuant to a conspiracy among them"—is that what you have written here?

Mr. McConnell: That is right.

(Plaintiffs' tendered instruction No. 24, as so corrected, being as follows:)

"The Court instructs the jury that if you find from the evidence in this case that there was no combination or conspiracy to fix admission prices on the part of the de-
fendants and that there is no unreasonable restraint
2721 of trade, you will still have to consider whether or
not the plaintiffs have been arbitrarily or unreasonably refused a prior run in "C" week by the defendants, and pursuant to a conspiracy among them, and in considering this question you will also take into consideration the relative merits of the theatres involved and the relative locations of the theatres, the ability or inability of the plaintiffs to make an offer or bid for such earlier playing position, and the question of whether or not the plaintiffs have been prevented by the defendants from making a bid for such run, and if you find that the plaintiffs have never been offered an opportunity by the defendants to bid for such prior run, then the mere fact that the plaintiffs have tendered no money for such prior run will not prevent their recovery as the law will not compel
a person to do a useless act."

2722 The Court: Now, let's see. I wish during the noon hour you would look over these three that Mr. O'Brien passed up to me this morning, here.

Mr. O'Brien: I have got copies for him. (Submitting copies of instructions to counsel.)

The Court: Oh, have you got copies?

Mr. McConnell: All right, I will.

Mr. Adcock: I wanted leave to amend the answers on this pari delicto matter, and I have given copies to counsel.

The Court: The same thing that you have filed this morning?

Mr. O'Brien: I did file it, your Honor, but I didn't interrupt Mr. McConnell to present the copies to him.

Mr. McConnell: I have no objection.

The Court: Well, that is the one you gave the Clerk?

Mr. O'Brien: Yes.

The Court: Is this the same thing?

Mr. Adcock: It is on the in pari delicto proposition.

(Whereupon a recess was taken to 2 o'clock p. m., of the same day, Wednesday, March 8, 1944.)

2723 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption) * *

Before Igoe, J., and J.,
Wednesday, March 8, 1944,
2:00 o'clock p. m.

Court met pursuant to recess.

Counsel present:

Mr. McConnell,
Mr. Korfist,
Mr. Adcock,
Mr. Goldberg,
Mr. Seeley,
Mr. O'Brien.

2789 Further Discussion of Proposed Instructions:

(Thereupon the Court and counsel considered three additional defendants' tendered instructions, heretofore submitted by Mr. O'Brien, and being in words and figures as follows:)

The Court instructs the Jury that if it believes from all of the evidence that the Avalon and Jeffery Theatres operated by Warner Bros. Circuit Management Corporation are in competition with the plaintiffs' Jackson Park Theatre, and if it further finds from all of the evidence that the said theatres as to size, structure, appointments and location are such that the defendant distributors might in the exercise of sound business judgment license them to exhibit pictures in runs prior to that licensed to the Jackson Park Theatre, then the Court instructs you that the defendant Vitagraph, Inc., is not guilty of any illegal act merely by reason of the fact that it licensed certain theatres of its affiliate Warner Bros. Circuit Management Corporation to play pictures in runs prior to that which it licensed

to the Jackson Park Theatre, but that on the con-
2790 trary under such circumstances Vitagraph, Inc., was entitled so to do, and entitled to refuse to license the Jackson Park Theatre in the same run as it had licensed to the Jeffery Theatre.

The Court instructs the Jury that even if it believes from all of the evidence that the Jeffery Theatre is not superior as to size, character or location to the Jackson Park Theatre, that nevertheless Vitagraph, Inc., is as a matter of law justified in refusing to license the Jackson Park Theatre to play pictures in the same week as the Jeffery Theatre operated by Warner Brothers Circuit Management Corporation, affiliated with said Vitagraph, Inc., if the jury further finds from all of the evidence that it would be harmful to the operation of the Jeffery Theatre to license the Jackson Park Theatre to play in the same week.

The Court instructs the Jury that if it finds from all the evidence that the defendant Warner Bros. Circuit
2791 Management Corporation did not acquire an interest in any of the theatres involved in this proceeding until after the time that the alleged system of release, if any, now in effect became operative and if it further finds from all the evidence that it acquired its said interest from independent exhibitors and continued to exhibit pictures in the same runs in which the said independent exhibitors had been licensed to exhibit them, and if the jury further finds from all the evidence that Warner Brothers Circuit Management Corporation did so without knowledge of the illegal purpose, if any, in respect of said system and because of a business necessity, then the Court instructs the Jury that Warner Bros. Circuit Management Corporation is not thereby to be deemed to have joined in a conspiracy, if any.

2792 Mr. McConnell: I think there should be added to these: "provided it was not acting pursuant to a combination or conspiracy."

The Court: Then this first one will read: "entitled to refuse to license the Jackson Park Theatre in the same run as it had licensed to the Jeffery Theatre; provided it was not acting pursuant to a combination or conspiracy."

Mr. Adcock: Where do you want to put that?

The Court: That would be a clause at the end.

Mr. Adcock: "Provided it did not act pursuant to a combination or conspiracy."

The Court: Now, this other one, I don't see where it fits in there.

Mr. McConnell: Is that the one that starts—

The Court: "If you find from all the evidence that the defendant Warner Bros. Circuit Management Corporation did not"—

Mr. O'Brien: No, it doesn't belong there.

The Court: You say they are not liable there if they did that thing without knowledge of the illegal purpose."

Mr. O'Brien: That is right.

The Court: Of course, that is about the same as
2793 saying they were not acting pursuant to a combination or conspiracy.

Mr. McConnell: That's about the same thing.

Mr. Adcock: Which one is that?

The Court: That is the last one.

Mr. McConnell: That was not yours; that was Mr. O'Brien's.

Mr. O'Brien: That is this one (indicating).

Mr. Adcock: Oh, yes, but I was going to make a suggestion that if those are going in, I would like to have one as far as Paramount is concerned, the same way.

The Court: Well, suppose you get that up tonight, and show it to Mr. McConnell tomorrow morning?

Mr. O'Brien: Well, can we clear these? That is all right with me. Can we clear these now, Judge?

The Court: Yes, we have cleared them.

Mr. McConnell: We have cleared them if you make those amendments.

The Court: That is all right with you, isn't it, those amendments he has suggested?

Mr. O'Brien: Yes, sir.

Mr. Adcock: If I can then get the amendments
2794 you make, I can draw one like it.

The Court: Suppose I give you these; then you can give them back to me.

Mr. Adcock: All right, then, I will.

(Said additional defendants' tendered instructions, as agreed to and amended by Mr. O'Brien, being as follows:)

The Court instructs the Jury that if it believes from all of the evidence that the Avalon and Jeffery Theatres operated by Warner Bros. Circuit Management Corporation are in competition with the plaintiffs' Jackson Park Theatre, and if it further finds from all of the evidence that the said theatres as to size, structure, appointments

and location are such that the defendant distributors might in the exercise of sound business judgment license them to exhibit pictures in runs prior to that licensed to the Jackson Park Theatre, then the Court instructs you that the defendant Vitagraph, Inc. is not guilty of any illegal act merely by reason of the fact that it licensed certain theatres of its affiliate Warner Bros. Circuit Management Corporation to play pictures in runs prior to that which
2795 it licensed to the Jackson Park Theatre, but that on the contrary under such circumstances Vitagraph, Inc. was entitled so to do, and entitled to refuse to license the Jackson Park Theatre in the same run as it had licensed to the Jeffery Theatre; provided it was not acting pursuant to a combination or conspiracy.

The Court instructs the Jury that even if it believes from all of the evidence that the Jeffery Theatre is not superior as to size, character or location to the Jackson Park Theatre, that nevertheless Vitagraph, Inc. is as a matter of law justified, provided it was not acting pursuant to a combination or conspiracy, in refusing to license the Jackson Park Theatre to play pictures in the same week as the Jeffery Theatre operated by Warner Brothers Circuit Management Corporation, affiliated with said Vitagraph, Inc., if the jury further finds from all of the evidence that it would be harmful to the operation of the Jeffery Theatre to license the Jackson Park Theatre to play in the same week.

2796 The Court instructs the Jury that if it finds from all the evidence that the defendant Warner Bros. Circuit Management Corporation did not acquire an interest in any of the theatres involved in this proceeding until after the time that the alleged system of release, if any, now in effect became operative and if it further finds from all the evidence that it acquired its said interest from independent exhibitors and continued to exhibit pictures in the same runs in which the said independent exhibitors had been licensed to exhibit them, and if the jury further finds from all the evidence that Warner Bros. Circuit Management Corporation did so without knowledge of the illegal purpose, if any, in respect of said system and because of a business necessity, then the Court instructs the Jury that Warner Bros. Circuit Management Corporation is not thereby to be deemed to have joined in a conspiracy, if any.

2797 Mr. Seeley: Your Honor, pursuant to the suggestions made yesterday, I would like to present, in behalf of each of clients, an amendment to its answer, setting up estoppel.

The Court: That has been presented on behalf of the other defendants, I think.

Mr. Seeley: It has?

Mr. McConnell: There is no objection to that.

Mr. Seeley: And I should like to have them filed nunc pro tunc as of the time the defendants rested—or as of the time the proof in the case closed yesterday. I believe that is the order in which they should appear in the record.

The Court: Yes.

Mr. O'Brien: I have made the same request of the Clerk.

The Court: What about my Clerk? Has he gone home, or is he just out for a walk?

Mr. McConnell: There is no objection to that on my part.

The Court: Yes. If we can find the Clerk now, maybe we can do some business.

Those are some amendments they want filed to
2798 their answers. We have some more here, haven't we?

The Clerk: Yes, I have filed two already today.

The Court: Well, Mr. Seeley wants these filed, and they should all be filed in the record as of a time which will indicate they were made at the close of the proof in the case.

The Clerk: Yes. I have got Mr. Adcock's filed that way. I will have to change Mr. O'Brien's.

The Court: Then I think the three of them ought to go in the same way.

The Clerk: All right. They will be filed as of yesterday, March 7th?

The Court: Yes.

(Amendments filed as requested.)

(Thereupon an adjournment was taken until Thursday, March 9th, 1944, at the hour of ten o'clock A. M.)

2799 IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption)

Before IGOE, J., and J.
Thursday, March 9th, 1944.
10:00 o'clock A. M.

Court met pursuant to adjournment.

Counsel present:

Mr. McConnell,
Mr. Korfist,
Mr. Adcock,
Mr. Seeley,
Mr. O'Brien.

Mr. Adcock: You Honor, I have a couple of instructions, which we were discussing yesterday. I worked on them over night, and I would like to hand them in (handing to the Court).

The Court: All right.

(A short recess.)

2843 First, and by way of introduction, and by way of background, Mr. Seeley had in this case an exhibit which he prepared or had prepared from newspaper clippings of what happened back in the early days, when the Jackson Park played in a free and open system of competition.

And if you will look at those sheets—not the summaries, but look at the sheets and see what was happening in those days—here was the Jackson Park playing pictures ahead of the Tivoli, ahead of all the theatres in certain instances; playing day and date with others; playing pictures that weren't played at all. They were buying pictures in those days just like Mrs. Bigelow said she wanted to buy her hat. And they did it in those days, and they lived
2844 under that system.

And that's the system which is the American way. And it doesn't mean that the Jackson Park plays every picture ahead of the Maryland, or the Maryland plays every picture ahead of the Jackson Park or the Tivoli, or any of the others. But it means that each theatre, according to its lights, can go out with its money in the open

market and buy pictures against the field—where each distributor is competing for the business of the theatres—where you can go to A and say "Here is my price," and you can go to B and say "Here is my price," and you can go to C and say "Here is my price," and they are bidding for your business, and you are bidding for their business. That's the free and American way of doing business. And you know it; and we all know it. And there it was being done.

2855 I am not going to labor any further this point of conspiracy. You have seen the evidence. You have heard the witnesses. You see what I have been trying to get at in my cross examination throughout the case. If we haven't proved a price-fixing scheme here, I don't know how in the world it could ever be proven. It is here. And if you people follow the instructions of the Court, you can't ignore it; you can't avoid it; you can't evade it. And it means that the whole system is illegal; and it means it can't be justified by theatres; that it can't be justified by any of these things that Mr. Adcock has talked about here this morning. It can't be justified in that way. Why? Because it is unreasonable per se. We won't go into the weighing of these things when you are fixing prices; we won't determine whether it is better this way or it is better that way. That's out.

2861 Now, Mr. Adcock gets up here this morning, and he says we can't prove any damages because we haven't any base, because we weren't in a free and competitive business, and all that. Now, let's see about that.

We took a base of four years, as I told you people. And you will find on Exhibit 57, I think it is, or 47—

Mr. Adcock: 47.

Mr. McConnell: At the bottom of 47—at the bottom of 48, you will find an average net profit for four years. And he eliminated the "Bank Night," that is out of the case—you heard him eliminate that; and he did it fairly, he gave them the benefit of the doubt on every single dollar that he could. And he took as a base $44,000. And then he took the actual receipts for the succeeding years; and he ended with a figure of $125,655.99.

2862 You don't have to remember all of that figure, because we are only suing for $120,000. Somewhere along the line we didn't compute it when we filed our complaint,

and we are limited by our complaint. You have got $120,000 of damages here.

Is your base proper? Is it higher or lower than a competitive market? If what we say is true, if what we have tried to show you here is true, it must be lower than a competitive market, because it is designed to make our profit lower. And, as he says, it was working on us back there then. It must be lower. So you are safe in taking that figure, because it is lower than what it would be in a free and open market. That is what we are fighting about here, is to get into a free, open market. So you don't have any trouble about the damage in this case.

And the Court will instruct you that if you have any trouble and any difficulty at all, because of this conspiracy, in computing the thing—all you have got to have is a reasonable basis. If you have any trouble at all, and it is caused by the conspiracy, they can't complain of that.

2863 They have created that situation. After creating a situation, can they come along and say that "because we have got these people in this position, because we have wrecked their base, because we have got them in here, that they can't do anything about it?" Why, it wouldn't make any sense; it wouldn't make any justice, and it isn't the law.

And the Court will so instruct you.

2870 The Court: I think at this time we ought to take our recess. I am going to ask the jury to come back at 1:30, so we can have these instructions read at that time, because I must start this other case soon after two.

So we will take a recess until 1:30.

(Thereupon a recess was taken until 1:30 o'clock p. m. of the same day, Thursday, March 9, 1944.)

2871 IN THE DISTRICT COURT OF THE UNITED STATES
* * (Caption) * *

Before Igoe, J. and Jury.
Thursday, March 9, 1944.
1:30 o'clock P. M.

Court met pursuant to noon recess.

Counsel present:

Mr. McConnell
Mr. Korfist
Mr. Adcock
Mr. Goldberg
Mr. Seeley
Mr. O'Brien.

2872 The Court's Charge to the Jury:

Now, ladies and gentlemen of the jury: Preliminary to your being accepted and sworn in as jurors in this case you were examined by counsel for both plaintiffs and defendants as to your competency and qualifications to act as jurors in this case. As a part of such examination, each of you answered all questions asked by counsel. Your answers showed that you were competent and qualified to act as jurors in this case and the parties to this suit accepted you as jurors on the faith of your answeres. The answers you then made to said questions in regard to your competency, qualifications, fairness, lack of prejudice and freedom from passion and sympathy are as binding on you now as they were then and should so remain until you are finally discharged from further consideration of this case. It would be improper for you to disregard the answers that rendered you competent as jurors.

The plaintiffs, Florence B. Bigelow, Marion B. Koerber, John E. Bloom and William C. Bloom, have brought this suit against the defendants, RKO Radio Pictures, Inc., Loew's, Incorporated, Twentieth Century-Fox Film
2873 Corporation, Paramount Pictures, Inc., Balaban & Katz Corporation, Warner Bros. Pictures, Inc., Vitagraph, Inc., Warner Bros. Circuit Management Corporation and Warner Bros. Theatres, Inc., under Sections 1, 2,

and 7 of an Act known as the Sherman Act, and Sections 1 and 4 of the Clayton Act.

Section 1 of the Sherman Act provides, among other things, the following:

"Every contract, combination, in form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States * * * is hereby declared to be illegal * * * *."

Section 2 of the Sherman Act provides as follows:

"Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States * * * shall be deemed guilty of a misdemeanor * * * ."

Section 7 of the same Act provides:

"Any person who shall be injured in his business or property by any other person or corporation, by reason of anything forbidden or declared to be unlawful by this Act, may sue * * * and shall recover threefold the damages by him sustained, and the costs of suit, including a reasonable attorney's fee."

Section 1 of the Clayton Act, the other Act under
2874 which this lawsuit is brought, so far as here applicable, defines "anti-trust laws" as including the Sherman Act and the Clayton Act, defines "commerce" as meaning trade or commerce among the several States, and defines "person" or "persons" as including corporations.

Section 4 of the Clayton Act is substantially the same as Section 7 of the Sherman Act, authorizing any person who shall be injured in his business or property by reason of anything forbidden in the anti-trust laws to bring suit for threefold damages, costs and attorney's fees.

You are advised that not every contract which restrains trade or commerce is unlawful under said Section 1 of the Sherman Act, but only those restrains which are in their nature unreasonable are thereby made unlawful.

It is the duty of the Court to state to you in the form of instructions the principles of the law which apply in this case and it is your duty as jurors to follow the law
as given to you in these instructions and to apply it
2875 to the evidence in reaching your verdict. The instructions given to the jury are and constitute one connected body and series and should be so regarded by the jury; that is to say, they should apply them to the

facts as a whole and not detach or separate any one instruction from any of the others.

The Court instructs you that it is your duty to accept the instructions of the Court as to the law in this case and that any statement made by counsel as to what the law may be which is contrary to the law as given you in the court's instructions should be wholly disregarded and given no consideration in arriving at your verdict.

You are instructed that while it is the duty of the Court to declare the law, and the duty of the jury to be governed by that law in their consideration of the evidence, it is, on the other hand, your exclusive province and right to pass upon the facts in the case and upon the credibility of the witnesses. With those functions the Court has nothing whatsoever to do, other than to endeavor to see that
only proper evidence is permitted to appear before
2876 the jury for their consideration. It is not the intention of the Court to influence in any way your judgment as to the facts of the case. If, therefore, during the progress of this trial you have gathered any impression from anything which the Court may have asked of a witness or may have stated in its rulings, or in the course of discussion of counsel, as to the views or opinion or judgment of the Court with respect to the facts of this case, or as to the weight of any evidence, or as to the credibility of any witness, you should disregard that impression and base your verdict entirely upon your own judgment as to what the evidence establishes.

You are also instructed that the plaintiffs must establish their case by a preponderance of the evidence. This preponderance, however, is not alone necessarily determined by the number of witnesses testifying to a particular fact or state of facts.

I advise you again, the jury are the sole judges of the credibility and weight to be given to the testimony of the witnesses.

In determining upon which side is the preponder-
2877 ance, and in weighing the testimony of each witness, you should consider all of the circumstances under which the witness testified; his or her demeanor on the stand; the relation which he or she bears to any of the parties; the manner in which he or she might be affected by the outcome of this case; his or her manner of testifying; apparent candor and fairness, or lack thereof; the

reasonableness or unreasonableness of his or her story; his or her apparent intelligence or lack of intelligence; the extent to which he or she is corroborated or contradicted by other credible evidence, and any other circumstances that tend to throw light upon his or her credibility.

If counsel for either side, either in their arguments or at any other stage of the trial, have made any statements which are not supported by any evidence or proof, it is the duty of the jurors to entirely ignore such statements and not to be influenced in the least by such statements in arriving at their verdict.

Evidence offered by either party to which objection was sustained or which was stricken out by order of the Court is not before the jury and should not be considered by you in arriving at your verdict.

2878 There are two kinds of evidence; direct and circumstantial. Direct evidence is that sort of evidence by which a fact is proved directly, and without inference from other facts. Circumstantial evidence is that sort of evidence by which an inference of an unknown fact is drawn from the existence of known facts. In arriving at your verdict, you are to consider all of the evidence, both direct and circumstantial.

Before a fact sought to be established by the plaintiffs can be said to have been proved by circumstantial evidence alone, it is necessary not only that the circumstances proved by the evidence shall reasonably give rise to an inference of such fact, but also that no other equally reasonable inference can be drawn from the same circumstances. If two equally reasonable inferences can be drawn from circumstances proved by the evidence, one consistent with the fact sought to be proved and the other inconsistent therewith, you should not infer the fact sought to be proved from such circumstances alone. Moreover, when the plaintiffs' right of recovery depends upon the existence of a particular fact, such as conspiracy,

2879 which must be inferred from proven facts, it is not permissible to make such an inference in the face of positive and otherwise uncontradicted testimony of unimpeached witnesses consistent with the facts actually proved, from which testimony it affirmatively appears that the fact sought to be inferred did not exist.

You should not allow the fact that the defendants in

this case are corporations to influence your verdict in any way. It is your duty to give these corporations the same impartial consideration in weighing the evidence and in arriving at a verdict as you would give to any individual.

The purpose of the Court in permitting the jury to inspect and view the premises of the several theatres involved in this case was for the sole purpose of enabling you to better understand the evidence presented in the courtroom. Any fact which you may have learned in the course of inspecting such premises is not evidence in the case and should not be considered by you as such but you should determine the issues herein entirely from the evidence received during the trial.

2880 The Court instructs the jury that if you find that there was a conspiracy to fix minimum admission prices, then the fact that there were business reasons which made such fixing of admission prices desirable to those defendants which you find to have participated therein, if you so find, or the fact that for other reasons the arrangements might be deemed to have desirable consequences, would be no legal justification for such fixing of prices.

And if you further find that the so-called Cricago system of release is an inseparable part of a price-fixing scheme between the defendants or some of them, then the contracts and clearance schedules incorporating the same therein are invalid and illegal and the plaintiffs are entitled to recover for any damages proximately caused thereby.

You are advised that a conspiracy is an agreement, express or implied, between two or more persons to do an illegal act or to do a legal act in an illegal manner. It is a combination by two or more persons to accomplish an unlawful purpose by concerted action. The essence
2881 of conspiracy is the unlawful combination, association or agreement. In order to establish the existence of a conspiracy the plaintiffs must show by a preponderance or greater weight of the evidence that the minds of the defendants, or some of them, united in a common agreement or design. Such agreement need not be formal, nor established by direct evidence, but may be established by circumstantial evidence. If, however, from the facts and circumstances shown by the evidence it is

as reasonable to draw a conclusion consistent with innocence as one that imputes illegality, then the former must be adopted.

Similar or identical action on the parts of two or more of the defendants does not necessarily show any agreement, combination, concert of action or common design among them, but may be consistent with each having acted independently of the others. Such similar or identical action is simply a circumstance which may be taken into consideration, along with all of the other facts and circumstances shown by the evidence, in determining whether there was any agreement, combination, concert of action or common design among the defendants or some of them.

2882 Each distributor defendant, acting alone, has the right to select its own customers and to license them to exhibit its films in such runs and with such priorities of run and clearance over others as it believes will produce for it the greatest aggregate amount of licence fees.

You are also instructed that an unlawful conspiracy may be formed without simultaneous action or agreement on the part of the conspirators and that knowing participation by competitors without previous agreement in a plan the necessary consequence of which, if carried out, is unreasonable restraint of interstate commerce, is sufficient to establish an unlawful conspiracy under the Federal anti-trust laws.

You are instructed that it is not necessary in the proof of a conspiracy to restrain commerce that the plaintiffs show by direct testimony that the defendants entered into any agreement with each other to impose restrictions upon subsequent run exhibitors, but that they are entitled to rely on inferences drawn from the course of conduct of the alleged conspirators; and that when there is

2883 unanimity of action showing an initial desire to seek or compel a common plan or design, there may be sufficient evidence of the agreement, unless there is persuasive evidence to the contrary; and you are further instructed that similarity of action by interested parties is not necessarily to be regarded as coincidence.

The alleged contract, combination, conspiracy, monopoly or attempted monopoly charged by the plaintiffs in this case is claimed to have had for its supposed objects one or more of the following:

First: To maintain in Chicago and its environs a system of releasing motion picture films in such manner that theatres owned or operated by the defendants or their subsidiaries were given preference and priority in the exhibition of such film over independent exhibitors, including the plaintiffs, and enjoyed prior runs of such film and clearance in the exhibition thereof over competing theatres, including the plaintiffs' theatres, not owned or operated by the defendants or their subsidiaries.

Second: To discriminate against the plaintiffs' theatre by refusing to license the exhibition of motion
2884 picture films in said theatres in a run earlier than the first week of Chicago general release, being the tenth week after the conclusion of the first run of any such film in the Chicago Loop.

Third: To force the plaintiffs to exhibit double feature programs in their theatres by introducing double feature programs in theatres affiliated with the defendants.

The burden of proof in this case is upon the plaintiffs and, in order to recover from the defendants, the plaintiffs must prove the material and essential elements of their case by a preponderance or greater weight of the evidence.

The first material and essential element of the plaintiffs' case which the plaintiffs must so prove is that the defendants or some of them agreed, combined or conspired together to accomplish one or more of the alleged objects charged by the plaintiffs.

The second material and essential element of the plaintiffs' case which the plaintiffs must so prove is that the alleged objects of any such alleged agreement, combination or conspiracy constituted an unreasonable restraint of trade or commerce.

2885 The third material and essential element which the plaintiffs must so prove is that as a direct and proximate result of some act or acts done by the defendants or some of them in furtherance of such alleged agreement, combination or conspiracy, the plaintiffs have been injured in their business or property.

If you find that the preponderance or greater weight of the evidence as to any of these material and essential elements of the plaintiffs' case is with the defendants, or if you find that the evidence as to any of such material and essential elements is so evenly balanced that you can not

determine upon which side the preponderance or greater weight thereof lies, then, in either of such events, your verdict should be for the defendants.

The plaintiffs charge in their complaint that the runs granted by the defendant distributors and each of them to certain theatres operated by Balaban & Katz Corporation and to certain other theatres operated by Warner Brothers Circuit Management Corporation are discriminatory and arbitrary and illegally discriminate against the business of plaintiffs of operating the Jackson Park Theatre.

2886 You are instructed that if you believe from the preponderance or weight of all the evidence that the runs in which the said theatres have played pictures licensed by the defendant distributors during the period from July 28, 1937 to July 28, 1942 were reasonable and not unreasonably discriminatory against the business of plaintiffs in the operation of the Jackson Park Theatre, considering the size, location, character of said theatres, the transportation facilities and the potential drawing power of patronage by said theatres and each of them, as compared with the size, location, character, the transportation facilities and the potential drawing power of patronage, then the jury must find this issue for the defendants.

The Court instructs the jury that if you find from the evidence in this case that there was no combination or conspiracy on the part of the defendants to fix minimum admission prices and that there is no unreasonable restraint of trade by virtue of the system of release, you will still have to consider whether or not the plaintiffs have been arbitrarily or unreasonably, and pursuant to a conspiracy among the defendants, refused a prior run in "C"

2887 week by the defendants, and in considering this question you will also take into consideration the relative merits of the theatres involved and the relative locations of the theatres, the ability or inability of the plaintiffs to make an offer or bid for such earlier playing position, and the question of whether or not the plaintiffs have been prevented by the defendants from making a bid for such run, and if you find that the plaintiffs have never been offered an opportunity by the defendants to bid for such prior run, then the mere fact that the plaintiffs have tendered no money for such prior run will not prevent their recovery as the law will not compel a person to do a useless act.

The motion picture films involved in this case were the

property at all times of the producers or distributors of such films and were copyrighted articles. The owner of a copyright owns an exclusive right to reproduce or exhibit the copyrighted article. The owner of such a copyright may exercise his exclusive right to reproduce or exhibit the article himself or he may authorize others to do so by means of a license, upon such lawful terms and conditions
2888 as the owner may prescribe. It is lawful and proper for the owner of a copyright on a motion picture film, acting alone and without agreement, combination or conspiracy with others, to license the exhibition of such film only at such places and at such times and at such minimum admission prices as may be set forth in the license agreement.

The Court instructs the jury that the owner of a copyrighted product may not by virtue of his copyright condition his license so as to tie to the use of the copyrighted product the use of other products which lie outside of the monopoly of the copyright licensed, or condition the license so as to control conduct by the licensee not embraced in the copyright monopoly or upon the maintenance of minimum admission prices which the public shall pay for an entertainment which includes features other than the particular picture licensed.

The Court instructs the jury that if a contract, combination or conspiracy in violation of the Federal anti-trust laws is or are proved, the fact that films which are
2889 the subject of such agreements are copyrighted does not free the agreements so proved of their illegality.

The jury are instructed that if plaintiffs knowingly and voluntarily participated in the alleged system of releasing pictures for exhibition in motion picture theatres in Chicago, of which system complaint is made by plaintiffs, and under said system made contracts for film giving to their theatre a run ahead of and clearances over other theatres, in competition with plaintiffs' theatre, and with minimum admission price for the same and subsequent runs, then plaintiffs are estopped to complain in this case of said system of release, with runs, clearances and minimum admission prices.

You are also instructed that if you find that the plaintiffs had merely bought film from the defendants under contracts because of a business necessity and that the plaintiffs had not with a knowledge of the defendants' purpose

to monopolize helped to build up a monopoly, then the plaintiffs are not estopped to complain against the defendants.

2890 The jury are instructed that the plaintiffs cannot recover damage on the basis of profits which the Jackson Park Theatre had earned while it was playing pictures in the run or playing position with clearances and with minimum admission prices allegedly provided for and fixed by the system of release alleged to have been established, maintained and continued illegally by the defendants, to the extent that such profits had been increased by the theatres paying in such run or playing position and exceeded those in a normal business. And the jury are further instructed that such profits must be reduced to the basis of normal profits if it appears from a preponderance of all the evidence that such profits may be so reduced.

Plaintiffs seek to recover damages for the alleged acts of defendants on one of two theories, as follows:

(1) The amount of money that plaintiffs' profits in the operation of the Jackson Park Theatre for the five years from July 28, 1937 to July 28, 1942, were less than they would have been had the gross receipts from admis-

2891 sions and the film rental expense of the Jackson Park Theatre been equal to the amount of the gross receipts from admissions and film rental expense of the Maryland Theatre of the defendant Balaban & Katz Corporation for said five year period.

(2) The amount of money that plaintiffs' profits in the operation of the Jackson Park Theatre for the five years from Juy 28, 1937 to July 28, 1942, were less than five times the average yearly profits of said theatre for the four year period prior to said July 28, 1937, eliminating estimated "Bank Night" receipts for the year 1936.

The jury are instructed that if they find from a preponderance of all the evidence that plaintiffs have been injured by the alleged acts of defendants, they must choose one or the other of said two theories of determining damage or the amount of damages.

If the jury selects the first theory of determining damages as above mentioned, they must first find from a preponderance of all the evidence what amount of the

2892 gross receipts from admissions and amount of expense of film rental of the Maryland Theatre for the said five year period from July 28, 1937 to July 28, 1942,

was derived or resulted from the operation of the Maryland Theatre under normal conditions of free and open competition and not from or as the result of the operation of said theatre in the playing position, under clearances and minimum admission prices allegedly provided by the so-called system of release and under double feature policy alleged and claimed by the plaintiffs to have been established, maintained and continued by defendants through conspiracy and unlawful agreement, and the jury shall use said gross admissions amount and said film rental expense so to be found by them as the factor from which to calculate the damages for said five year period.

If the jury selects the second theory above mentioned to determine and fix damages, they must first find from a preponderance of all the evidence what if any portion of the yearly average profits of the operation of the Jackson Park Theatre for the four year period prior (eliminating certain "Bank Night" receipts) to said July 28, 1937,
2893 was derived from operation under conditions of free and open competition and not from operation in the playing position, under the clearances and minimum admission prices of the so-called system of release and under double feature policy which plaintiffs allege and claim defendants by conspiracy established, maintained and continued, and the jury shall then use such, if any, portion of said yearly average as the factor from which to determine the damages sought to be recovered by plaintiffs.

2894 "The existence in Chicago and its environs of a so-called "system of release" consisting of consecutive periods or weeks of release in which motion picture theatres are licensed from time to time to exhibit motion picture film, is not in itself unlawful.

If you find from the evidence that such "system of release" was maintained by the defendants or some of them by agreement, combination, or conspiracy and that such system of release was an unreasonable restraint of trade and commerce in motion picture films, then such "system of release" was unlawful. If, however, you find from the evidence that such "system of release" was only the result of the nature of the business of distributing and exhibiting motion picture films and that it developed out of the independent actions of separate distributors and exhibitors, each attempting to conduct its business in the manner most beneficial to it, and without any agreement, com-

bination or conspiracy among them, or that, in view of the nature of the business, such a "system of release" was not an unreasonable restraint upon trade or commerce
2895 in motion picture films, then such "system of release" was entirely lawful.

The Court further instructs the jury that if you find a price-fixing combination to exist among the defendants or some of them, then, the fact, if you find it to be a fact, that the prices so fixed were reasonable does not make such fixing of prices lawful.

The Court instructs you that in determining what facts are proved in this case you should carefully consider all the evidence given before you with all the circumstances of the transactions in question as detailed by the witnesses and you may find any fact to be proved which you think may be rightfully and reasonably inferred from the evidence given in the case, although there may be no direct evidence or testimony as to such facts.

2896 The practice of granting priorities of run and clearances by distributors to exhibitors is lawful, provided such priorities of run and clearances are granted by each distributor independently and are not fixed or determined by agreement, combination or conspiracy among two or more of such distributors.

Each defendant distributor, acting independently, and not in a combination or conspiracy having selected a customer to which it desires to license a prior run of its films, has a right to grant such run to that customer, together with priority of run and clearance over competing theatres, without offering the same run to other possible customers and before entering into contracts for subsequent runs of the same films.

The Court instructs the jury that even if it believes from all of the evidence that the Jeffery Theatre is not superior as to size, character, or location to the Jackson Park Theatre that nevertheless Vitagraph, Inc., is
2897 as a matter of law justified provided it was not acting pursuant to a combination or a conspiracy in refusing to license the Jackson Park Theatre to play pictures in the same week as the Jeffery Theatre, operated by Warner Brothers Circuit Management Corporation affiliated with said Vitagraph, Inc., if the jury further finds from all of the evidence that it would be harmful to the

operation of the Jeffery Theatre to license the Jackson Park Theatre to play in the same week.

The Court instructs the jury that even if it believes from all of the evidence that the Maryland Theatre is not superior as to size, character or location to the Jackson Park Theatre, that nevertheless Paramount Pictures Inc. was as a matter of law, provided it was not acting pursuant to a combination or conspiracy, justified in refusing to license the Jackson Park Theatre to play pictures in the same week as the Maryland Theatre operated by Balaban & Katz Corporation, affiliated with said Paramount Picture, Inc., if the jury further finds from all of the
2898 evidence that it would be harmful to the operation of the Maryland Theatre to license the Jackson Park Theatre to play in the same week.

The Court instructs the Jury that if it believes from all of the evidence that the Avalon and Jeffery theatres operated by Warner Bros. Circuit Management Corporation are in competition with the plaintiffs' Jackson Park Theatre and if it further finds from all of the evidence that the said theatres as to size, structure, appointments, and location are such that the defendant distributors might in the exercise of sound business judgment license them to exhibit pictures in runs prior to that licensed to the Jackson Park Theatre then the Court instructs you that the defendant Vitagraph, Inc. is not guilty of any illegal act merely by reason of the fact that it licensed said theatres of its affiliate Warner Bros. Circuit Management Corporation to play pictures in runs prior to that which it licensed to the Jackson Park Theatre but that on the contrary under such circumstances Vitagraph, Inc., was
2899 entitled so to do and entitled to refuse to license the Jackson Park Theatre in the same run as it had licensed to the Jeffery Theatre; provided it was not acting pursuant to a combination or a conspiracy.

You are also instructed that if you believe from all of the evidence that the Tivoli and Maryand and Tower theatres operated by Balaban & Katz Corporation are in competition with the plaintiffs' Jackson Park Theatre and if you further find from all of the evidence that the said theatres as to size, structure, appointments, and location are such that the defendant distributors might in the exercise of sound business judgment license them to exhibit pictures in runs prior to that licensed to the Jackson Park

Theatre then the Court instructs you that the defendant Paramount is not guilty of any illegal act merely by reason of the fact that it licensed said theatres of its affiliate Balaban & Katz Corporation to play pictures in runs prior to that which it licensed to the Jackson Park Theatre but that on the contrary under such circumstances
2900 Paramount was entitled so to do and entitled to refuse to license the Jackson Park Theatre in the same run as it had licensed to the Maryland Theatre; provided it was not acting pursuant to a combination or conspiracy.

You are also instructed that if you find from all the evidence that the defendant Warner Bros. Circuit Management Corporation did not acquire an interest in any of the theatres involved in this proceeding until after the time that the alleged system of release, if any, now in effect became operative and if it further finds from all the evidences that it acquired its said interest from independent exhibitors and continued to exhibit pictures in the same runs in which the said independent exhibitors had been licensed to exhibit them, and if the jury further finds from all the evidence that Warner Bros. Circuit Management Corporation did so without knowledge of the illegal purpose, if any, in respect of said system and because of a business necessity, then the Court instructs you that Warner Bros. Circuit Management Corporation is not thereby to be deemed to have joined in a conspiracy, if
2901 any.

Each exhibitor defendant, acting alone, has the right to bargain for and obtain for its theatres licenses to exhibit films in such runs and with such priorities of run and clearances over other theatres as it believes are most advantageous to it, and it is not unlawful for one of such exhibitors, acting alone, and not in the course of a conspiracy or combination to bargain for and obtain the same runs, priorities of run and clearances for its theatres from each distributor with which it does business.

The Court instructs the jury that if you find from the evidence in this case a combination or conspiracy to monopolize ar unreasonably restrain the competition in the licensing or the exhibition of motion pictures, or if you find a combination or conspiracy to fix minimum admission prices in theatres exhibiting motion pictures licensed by the defendants or some of them, and if you further find

that as a proximate result of such combination or
2902 conspiracy the plaintiffs are damaged, then in such case your verdict will be for the plaintiffs.

The Court instructs the jury that if they find that the defendants, or some of them, have entered into a combination to fix admission prices and that, as an integral part thereof, runs and clearances are set up for the exhibiting of motion pictures under a so-called system of release; and that as a result thereof the plaintiffs are unable to obtain motion pictures for exhibition in their theatre until after such pictures have been shown by the competitive theatres owned by Warner Bros. Theatres, Inc., or by Balaban & Katz Corporation, and that as a proximate result thereof the plaintiffs are damaged, then your verdict shall be for the plaintiffs even though the plaintiffs did not attempt to exhibit motion pictures at prices less than the minimum admission prices fixed in plaintiffs' contract with the defendant exhibitors.

2903 The Court instructs the jury that only in the event that you find that there exists no conspiracy or combination to fix minimum admission prices, or no unreasonable restraint of trade, by the defendants by virtue of the Chicago system of release, will you have occasion to consider whether or not the plaintiffs demanded and sought to obtain a playing position in "C" week.

The action of the defendant exhibitors in introducing double feature programs into their theatres at or about the time of the acquisition of the Jackson Park Theatre by the plaintiffs was not in itself unlawful, even though you may find that it had the effect of forcing the plaintiffs to introduce double feature programs in their theatre.

If you find from the evidence that the defendant exhibitors so introduced double feature programs in their theatres by agreement, combination or conspiracy between them or among them and the distributor defendants, for the purpose or with the effect of injuring their competitors,
2904 then such action was unlawful.

If, however, you find from the evidence that each of the defendant exhibitors so introduced double feature programs into its theatres independently, and without any agreement, combination or conspiracy between them or among them and the distributor defendants, then such action by each of them was entirely lawful.

If you find from the evidence that the plaintiffs have

failed to establish by a preponderance or a greater weight of the evidence that the defendants, or some of them, agreed, combined or conspired to accomplish one of the objects charged by the plaintiffs, or if you find that the alleged object of any such alleged agreement, combination or conspiracy was not an unreasonable restraint of trade or commerce in motion picture films, or if you so find that the plaintiffs have failed to establish that they were injured in their property or business by some act or acts of the defendants done pursuant to such alleged agreement, combination or conspiracy, then it is unnecessary for you
2905 to consider the question of damages.

If, however, you find from a preponderance or greater weight of the evidence that the defendants have agreed, combined or conspired to accomplish one or more of the objects charged by the plaintiffs and that the object of such alleged agreement, combination or conspiracy unreasonably restrained trade or commerce in motion picture films, and that in pursuance thereof the defendants have committed acts which have injured the plaintiffs in their business or property, then you must find from the evidence the amount of the damages, if any, suffered by the plaintiffs as a direct result of such injury.

The damages, if any, which you properly may take into consideration in arriving at your verdict, if you find that the plaintiffs have established any right to recover damages are limited to those actual damages, if any, the amount of which can be determined from the evidence, and do not include claimed damages, if any, which are merely speculative, remote or uncertain. They must be proved by facts
from which their existence is logically inferable and
2906 cannot be supplied by conjecture. The burden is upon the plaintiffs to prove not only the amount of such claimed damages, but the fact that they resulted directly and proximately from acts of the defendants, if any, done pursuant to the alleged agreement, combination or conspiracy. The burden is not upon the defendants to show that such claimed damages, if any, may have resulted from some other cause.

This suit was commenced on July 28, 1942. While the plaintiffs have been permitted to introduce evidence going back over a long period of years, in order that they might attempt to show the alleged background and origin of any claimed contract, combination, conspiracy, monopoly or

attempted monopoly among the defendants, they cannot recover anything in this suit unless you believe they have proved by a preponderance or greater weight of the evidence that an unlawful contract, combination, conspiracy, monopoly, or attempt to monopolize among the defendants,
or some of them, existed within the five years immedi-
2907 ately preceding the filing of this suit, or after July
28, 1937, and that, as a result of something done by the defendants after July 28, 1937, plaintiffs were injured in their business or property. The damages, if any, which the plaintiffs can recover, if you believe that they have established the other material and essential elements of their case by a preponderance or greater weight of the evidence, are limited to those resulting from acts done by the defendants within the period of five years immediately preceding the filing of this suit.

The Court does not mean by anything in these instructions to intimate that the plaintiffs have or have not established a right to recover damages from the defendants, but you must determine that question from the evidence introduced at the trial, under the law as given to you in these instructions.

The mere fact that the plaintiffs in this case have filed a complaint which charges conspiracy, and that the same charge has been made against all of the defendants, is
entitled to no weight whatever as evidence that the
2908 defendants or any of them are guilty as charged.

You should consider the evidence with respect to each defendant independently, to determine whether or not that particular defendant is guilty as charged. Your verdict need not necessarily be the same as to all of the defendants, except that you cannot find that there was a conspiracy unless you find that there were at least two conspirators.

The Court instructs the jury that damages are not rendered uncertain because they cannot be calculated with absolute exactness. It is sufficient if a reasonable basis of computation is afforded although the result be only approximate, and the Court further instructs the jury that if they find that a conspiracy exists among the defendants or some of them as charged, then such defendants found to be in such conspiracy are not entitled to complain that the precise damages suffered by the plaintiffs cannot be measured with the same exactness and precision as would have been possible if the conspiracy had not rendered difficult

the ascertainment of the precise damages suffered by the plaintiffs herein.

2909 The statute under which this action was brought provides that any person who shall be injured in his business or property by reason of anything forbidden in the anti-trust laws shall recover three-fold the damages sustained by him and the costs of the suit, including a reasonable attorney's fee. However, if you should find for the plaintiffs it would be for the Court, in carrying out the provisions of this statute, to treble the amount of damages; that is to say, such verdict, if any, as might be rendered by you in favor of the plaintiffs, when entered by the Court will be multiplied by three and a judgment entered for such treble damages. Your verdict, if it be for the plaintiffs, will be limited to the actual damage, if any, which the evidence shows that the plaintiffs have sustained, and the fact that the Court may treble the damages found by the jury should not be taken into account in fixing the amount thereof, if any. Furthermore, the question of costs and the question of attorney's fees, if they are to be allowed, are matters that will be determined by the Court, and with which the Jury is not concerned.

2910 The Court: Now, there are several forms of verdict. There are two forms of verdict for each defendant. You will notice, when you go to your jury room, they are prepared in that fashion, and you are privileged to find each defendant guilty or each defendant not guilty, if that is the form of verdict you want to declare. On the other hand, there are two verdicts, in one of which you find all of the defendants guilty and assess plaintiffs' damages at a certain number of dollars and cents, as you may find to be the fact, and the other form of verdict is that you find all of the defendants not guilty.

I think when you look at these verdicts they will be self-explanatory to you.

Now, the first thing you should do, of course, when you retire to your jury room, is select some one of your members as your foreman, and thereafter proceed to deliberate upon your verdict.

There is one thing you don't have to do. You don't have to forget your common sense. Whatever common sense has lived with you throughout your individual lives, and which guided you in arriving at the more important judgments

that have come up for decision in your individual
2911 lives, take that sort of judgment into the jury room with you, and make use of it.

Swear the Marshal to take custody of the Jury. (The Marshall was then sworn)

Mr. Seeley: I believe the Rules require us to do certain things before the Jury retires.

The Court: I thought we would have the record show that fact before the Jury retires. The exception that you gentlemen took to the instructions as we were discussing them, I mean the exceptions taken at that time, are all repeated, and you insist on them.

Mr. Seeley: It is necessary to take another exception, because the Court read an instruction which I understood was going to be refused. Therefore, I do not think the record shows any exception to it.

The Court: Which one was that?

Mr. Seeley: That is the instruction which in effect told the Jury that it was unlawful for a distributor to fix minimum admission prices when its films were shown on a double bill with some other distributor's films. I had a distinct understanding that that was not to be given.

Mr. McConnell: We argued that out, and your Honor granted that instruction.

2912 The Court: I think any instruction that was given was the subject of our argument here. Now, you might have misunderstood what I said I was going to do at that time, but if you don't think you took exception at that time, your are taking exception now.

Mr. Seeley: I certainly am, yes. That is very prejudicial.

The Court: Whatever exception he takes applies to all of you.

Mr. Seeley: Yes.

Mr. Adcock: Yes.

Mr. O'Brien: How many forms of verdict were there? I didn't hear.

The Court: How many defendants are there?

Mr. Korfist: Eight.

Mr. O'Brien: Seven.

Mr. Korfist: Eght defendants.

Mr. McConnell: Eight defendants.

The Court: There are eight defendants.

The Clerk: There are nine defendants.

The Court: There are eight defendants, eighteen verdicts; guilty or not guilty for each of the eight. Then guilty and not guilty for the entire group.

The Clerk: Nine.

The Court: Nine defendants.

2913 The Clerk: 20 forms, I drew up.

The Court: Nine defendants, I think. What is the point about that?

Mr. O'Brien: That's right.

The Clerk: Nine. 20 forms.

Mr. O'Brien: Yes. Now, how about the Jury, Mr. Marshall? What do you do with the Jury? Is there anything you want from us? I don't know what we should do.

The Court: You folks ought to provide for their evening meal.

I take it that if they reach a verdict, they may,—before or after five o'clock, they may sign the verdict and separate; and if you gentlemen will waive polling of the Jury?

Mr. McConnell: I will.

The Court: Is that agreeable to all three of you?

Mr. Seeley: After five o'clock?

The Court: Yes.

Mr. Seeley: Before that the Bailiff will call us?

The Marshal: I will take care of that. You give me your phone numbers.

The Court: Well, he will be here until then. If they come in after five, we will keep them here until after, oh, eleven o'clock anyhow.

2914 Mr. O'Brien: Then where are they going to go?

The Court: They are discharged. We are not going to keep them here any longer. We have no place to keep women around here.

Mr. O'Brien: I thought maybe you would put them up in a hotel.

The Court: Oh, no. No. Then they never would reach a verdict.

Mr. O'Brien: I see.

The Court: But it is agreed, I take it—you didn't say anything about waiving the polling of the Jury—now, is that agreeable to you? If not, we will have to be around here, and make ourselves available.

Mr. Seeley: I will waive.

Mr. Adcock: I will.

Mr. McConnell: I will waive.

The Court: What about you, Mr. O'Brien?

Mr. O'Brien: Well, I am thinking. I don't know. We can decide on that by five o'clock, can't we?

The Court: No. No.

Mr. O'Brien: Well, I will waive it, too.

The Court: No. They did that to us here once and they are not going to do it again, so far as I can do anything to prevent it.

Mr. O'Brien: All right. I will join in it, in the waiving.

2915 Mr. Adcock: How about the exhibits?

The Court: I think you ought to hire Brink's Express or somebody, to haul them in there. You folks know what the exhibits are.

Mr. Adcock: That is, each party I presume should get the exhibits together.

The Court: Give them to the Marshal, so he can take them in.

2952 PLAINTIFFS' EXHIBIT 1.

Real Estate Sale Contract—For Guarantee Policy Only.
Chicago Title and Trust Company 1928 Form.

The undersigned, Florence B. Bigelow, Marion B. Koerber, John E. Bloom, and William C. Bloom agree to purchase at the price of Three Hundred Ninety Thousand ($390,000.00) Dollars the following described real estate, in the County of Cook, State of Illinois, to-wit:

Lot One (1) in Block Four (4) in South Jackson Park Subdivision of the Northwest Quarter (NW¼) of the Southwest Quarter (SW¼) of Section 24, Township 38 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois,

and Edward I. Bloom & Marie C. Bloom, his wife, (William C. Bloom now holding title for them) agrees to sell said premises at said price, and to convey or cause to be conveyed to the purchaser a good title thereto by good and sufficient Warranty deed, with release of dower and homestead rights, subject only to:

(1) Existing leases expiring as made; (2) Special taxes or assessments for improvements not yet completed; (3) Installments not due at the date hereof of any special tax

or assessment for improvements heretofore completed; (4) General taxes for the year 1936 and 2nd install. of 1935 and subsequent years; (5) Building lines and building and liquor restrictions of record; (6) Zoning and building laws or ordinances; (7) Party wall rights or agreements, if any; (8) Roads and highways, if any.

This contract is executed in duplicate and the deposit of $4,000.00 herein mentioned has been delivered to the seller. Unless the purchaser shall be entitled to a refund the same is to be applied (1) to the payment of any expenses incurred by the seller and the balance to be retained by seller.

Rents, water taxes, insurance premiums and interest accrued on mortgage indebtedness, if any, are to be adjusted pro rata as of the date of delivery of deed and existing leases and insurance policies, if any, shall thereupon be assigned and delivered to purchaser. General taxes for the year 1936 are to be prorated from January 1, to the date of delivery of deed and if the amount of such taxes is not then ascertainable, the prorating shall be on the basis of the amount of the most recent ascertainable taxes.

The purchaser has paid Four Thousand ($4,000.00) Dollars as earnest money to be applied on said purchase when consummated, and agrees to pay, within five days after the title is shown to be good or is accepted by purchaser, the further sum of Three Hundred Eighty Six Thousand ($386,000.00) Dollars, provided a deed as aforesaid shall then be ready for delivery.

At the time of the closing of the deal the sellers are to furnish the purchasers with an agreement to the effect that they will pay on or before December 31, 1936, the unpaid balance on general taxes covering the above mentioned property for the years 1930, 1931, 1932, 1933, and 1934.

Within twenty days from the date hereof, seller shall deliver to purchaser or his agent (which delivery may be made at the office of John E. Bloom) a guarantee policy of the Chicago Title and Trust Company in the amount of the purchase price covering the date hereof, or its customary preliminary report on title, showing title in seller (or grantor), subject only to the matters to which this sale is subject by the terms hereof, and to the usual objections contained in owner's policies issued by said Company. If a report on title is furnished, seller shall deliver such guarantee policy at the time of delivery of deed, but seller upon

furnishing such report shall not be in default for failure to furnish such policy until ten days after written demand therefor by purchaser. If the report on title or guarantee policy so required to be furnished by the vendor discloses any defects in title, (other than such usual objections contained in owner's policies and the matters to which this sale is subject by the terms hereof) seller shall, upon tendering the same to purchaser or his agent within twenty days from the date hereof, have sixty days from the date which such report or guarantee policy bears within which to cure such defects and to furnish such guarantee policy or a later report showing such defects cured or removed. Every guarantee policy or report on title furnished by the vendor hereunder shall be conclusive evidence of good title as therein shown, subject only to the exceptions therein stated. If such defects in title be not cured within said sixty days, purchaser may terminate this contract or may, at his election, take the title as it then is (with the right to deduct from the purchase price liens or incumbrances of a definite or ascertainable amount), upon giving to seller or his agent notice of such election and tendering performance on his part, and in default of such notice of election or tender of performance within ten days after written notice to purchaser or his agent of the inability of seller to cure such defects this contract thereupon shall, without further action by either party, become null and void. If this contract be terminated except for purchaser's default, said earnest money shall be returned to purchaser.

If purchaser defaults hereunder, then, at the option of seller, said earnest money shall be forfeited as liquidated damages and this contract thereupon shall become null and void.

If, prior to delivery of deed hereunder, the improvements on said premises shall be destroyed or materially damaged by fire or other casualty, this contract shall, at the option of purchaser, become null and void. Payment of purchase price and delivery of deed shall be made at the office of Edward I. Bloom.

All notices and demands herein required shall be in writing. The mailing of a notice by registered mail to the seller at 6724 Stony Island Avenue, or to the purchasers at c/o John E. Bloom, 6930 South Shore Drive shall be sufficient service thereof.

Time is of the essence of this contract. The words "date hereof" mean date of delivery of this contract.

Dated the 26th day of October, A. D. 1936.

Florence B. Bigelow,
Marion B. Koerber,
John E. Bloom,
William C. Bloom,
Edward I. Bloom,
Marie C. Bloom.

Written across face of contract: Consummated by payment of cash and note. Oct. 30, 1936. E. I. Bloom, William C., Bloom.

Endorsed: Filed Oct. 11, 1944. Roy H. Johnson, Clerk.

2953 The following is Film License Agreement between Vitagraph, Inc. and Jackson Park Theatre dated December 31, 1940, from Pl. Ex. 11:

Endorsed: Filed Oct. 11, 1944. Roy H. Johnson, Clerk.

2954 PLAINTIFFS' EXHIBIT 11.

Season 1940-1941.

Warner Bros. and First National Productions.

Salesman	Contract Number
Harry Goldman	3120

Branch

Chicago

Schedule—Twenty-Third: The following Schedule and all of the written and printed parts thereof are a part of this license:

Schedule

Theatre	Exhibitor	Location of Theatre
Jackson Park	Wm. C. Bloom	6711 Stoney Island Ave., Chicago, Ill.

Warner Bros. Productions.

Release No.	No. of Consecutive Days	Film Rental: Fixed Rental	Film Rental: Sharing Terms: Guarantee	Film Rental: Sharing Terms: Percentage
		"Group I"		
501	4	132.50		
502	4	132.50		
		"Group II"		
503	4	100.00		
504	4	100.00		
505	4	100.00		
506	4	100.00		
		"Group III"		
507	4	75.00		
508	4	75.00		
509	4	75.00		
510	4	75.00		

	"Group IV"	
511	3	50.00
512	3	50.00
513	3	50.00
514	3	50.00
515	3	50.00
516	3	50.00
517	3	50.00
518	3	50.00
	"Group V"	
519	3	40.00
520	3	40.00
521	3	40.00
522	3	40.00
523	3	40.00
524	3	40.00
Totals		1605.00

First National Productions.

Release No.	No. of Consecutive Days	Film Rental: Fixed Rental	Film Rental: Sharing Terms: Guarantee	Film Rental: Sharing Terms: Percentage
		"Group I"		
551	4	132.50		
552	4	132.50		
		"Group II"		
553	4	100.00		
554	4	75.00		
555	4	100.00		
556	4	100.00		
		"Group III"		
557	4	75.00		
558	4	75.00		
559	4	100.00		
560	4	75.00		

	"Group IV"	
561	3	50.00
562	3	50.00
563	3	50.00
564	3	50.00
565	3	50.00
566	3	50.00
567	3	50.00
568	3	50.00
	"Group V"	
569	3	40.00
570	3	40.00
571	3	40.00
572	3	40.00
573	3	40.00
574	3	40.00
Totals		1605.00

Trailers	No. Consecutive Days	Rental Per Trailer
20 De Luxe		
28 Regular		

Preferred Playing Time Guaranteed.

Group	No. of Motion Pictures
I	4
II	8
III	8
IV	16

Exhibitor agrees to exhibit on the preferred playing time herein indicated the number of pictures of each group here specified and Distributor shall have the right to designate the motion pictures to constitute the number to be so exhibited.

Run:

First Week Chicago City Release.

Clearance:

Hamilton not to play prior to second week of Chicago City Release.

This Agreement specifically excludes any Motion Picture or Motion Pictures produced by any producer other than Warner Bros. Pictures, Inc. and acquired by the distributor for distribution.

P. Blaekin,
Exhibitor.

Additional Clauses.

1. Distributor may in its discretion, by giving Exhibitor notice in writing on or before "the available date" of the particular photoplays, interchange the film rental and terms (including the theatre, if more than one theatre is mentioned above, and exhibition dates) of any one or more of the photoplays with the film rental and terms of any other photoplay or photoplays of the same or different brand licensed hereunder, it being understood that the provisions of this paragraph shall include the right of Distributor in its discretion to substitute the film rental and terms, as defined herein, of any motion picture excluded from this license by Exhibitor pursuant to the provisions of Article "Fifteenth" hereof, in place of the film rental and terms of any other photoplay or photoplays of the same or different brand, thereafter made available, by giving Exhibitor notice in writing within fourteen (14) days after the receipt of the written notice specified in said Article of the Exhibitor's election to exclude such motion picture.

2. Admission Prices—The Exhibitor during the whole of the licensed exhibition period of each of the motion pictures exhibited hereunder agrees to and shall charge for admission to said theatre the following prices:

Evenings: Adults: Orchestra 25c, Balcony Children 10c. Matinees: Adults: Orchestra 15c, Balcony Children 10c.

Unless a greater minimum admission charge is herein specified, the Exhibitor agrees to and shall charge for admission to said theatre during the whole of the licensed exhibition period of each of the motion pictures, an actual admission fee which shall not be less than fifteen cents (15c) for each adult person for each matinee performance and not less than fifteen cents (15c) for each adult person for each evening performance.

If during any such period less than said admission prices is charged, the Distributor in addition to all other rights hereunder shall have the right: (a) to immediately terminate the license of the motion picture then being exhibited, by written notice to such effect to the Exhibitor and upon the giving of such notice, the license of such motion picture shall forthwith terminate and revert to the Distributor; or (b) provided the Exhibitor is granted herein a period of

"clearance" to reduce such period by not to exceed one-half in respect to each of the pictures thereafter deliverable hereunder or (c) provided no period of clearance is specified in the Schedule to withhold for a period not to exceed sixty (60) days notice of the date when each motion picture thereafter deliverable hereunder will be available for exhibition by the Exhibitor; and as to each such motion picture the "run" thereof, if any, granted the Exhibitor, shall be deemed revoked and the Exhibitor agrees to exhibit each such motion picture after notice of the available date thereof upon the date or dates determined as provided in Clause Fourth hereof.

3. Distributor shall have the right to designate the motion pictures to be exhibited at each respective film rental provided for in said Schedule.

4. The license herein granted for the number of days specified in the Schedule shall not include (a) the right of exhibition at any time during said exhibition period prior to 6 A. M. on the date or first date of exhibition provided for unless exhibition prior to 6 A. M. on said date or first exhibition date is expressly granted in writing, (b) any right of exhibition at any time other than on the respective date or dates of exhibition selected, designated or otherwise agreed upon, as provided herein and confirmed in writing by Distributor, nor (c) any right of exhibition other than by means of a print furnished to Exhibitor by Distributor for the express purpose of exhibition hereunder in the theatre or theatres selected, designated, or otherwise agreed upon as herein provided and confirmed in writing by Distributor.

5. In the event that Exhibitor shall violate the provisions of any other agreement between Distributor and Exhibitor for feature photoplays therein agreed to be leased, or shall fail to date, play and pay for the film rental provided for in such other agreement, Distributor may at its option exercise with respect to this agreement all or any of the rights granted Distributor under Paragraph Eighteenth.

6. The Exhibitor agrees that all advertising materials which Exhibitor may lease from the Distributor will be used only in conjunction with the exhibition of the respective motion pictures identified in such materials at the theatre

or theatres specified in the schedule, and only for the purpose of properly advertising and exploiting said respective motion pictures at said theatre or theatres, and the Exhibitor agrees not to trade, sublease, sell, give away, nor otherwise use or permit others to use such advertising materials.

7. The parties hereto recognize that the National Appeal Board referred to in Article Twenty-second is not now and may not during the term of this agreement be in existence. It is agreed, therefore, that until the said National Appeal Board shall be organized, the sixth paragraph of said Article shall be deemed to read as follows:

"The Arbitration Board shall have general power to determine such dispute or controversy as shall be submitted, to make findings of fact in respect thereof and to direct specific performance of a contract, and/or that the same has been breached in whole or in part, and/or that damages on such account shall be paid. The Board of Arbitration shall have the power only to give force and effect to the provisions of this license agreement and the rights or obligations of the parties thereunder."

8. Distributor grants the Exhibitor and the Exhibitor accepts a limited license, subject to the terms and conditions of this agreement, under the respective copyrights of the number of trailers (which term shall be deemed to mean films or prints ordinarily not in excess of one reel in length, designed to advertise and introduce the photoplays licensed hereunder) described in this schedule, and under the copyright of any matter included in any sound recorded therewith, to exhibit publicly said trailers and to reproduce for public performance such recorded sound in synchronism therewith, but only at the theatre and for the number of consecutive days specified in this schedule, and for no other use or purpose, on dates to be determined as follows:

In the absence of special provisions for special dates agreed upon in this schedule, Exhibitor agrees to commence the first exhibition of each of the said trailers seven (7) days prior to the first exhibition date determined as herein provided of the photoplay to which said trailer relates. Exhibitor agrees to pay Distributor for the rights herein granted with respect to each such trailer, the trailer rental indicated in this schedule therefor, and to make such payment at least five (5) days prior to the first agreed exhibi-

tion date of each such trailer, determined as herein provided.

Number of pictures offered: 48
Number licensed: 48

(End of Schedule)

Optional Arbitration Clause — The foregoing Clause Twenty-second is optional with the parties hereto. If it is desired to make such clause a part of this license, the Exhibitor and the duly authorized representative of the Distributor shall sign their respective names where indicated immediately following this paragraph and unless so signed the said Clause shall be deemed excluded from this license agreement.

It is agreed by and between the parties that Clause Twenty-second, providing for voluntary arbitration of disputes arising hereunder, shall be included as a part of this license.

G. L. Sears,
Representative of the Distributor duly authorized to agree to the following Clause Twenty-second.

P. Blaekin,
Exhibitor.

In witness whereof Wm. C. Bloom, the Exhibitor, operating the Jackson Park Theatre, located at 6711 Stony Island Ave. in Chicago, Ill. has on 12/10/40 executed this application, which upon written acceptance thereof by the Distributor shall be deemed to be the license of the said Exhibitor for the exhibition of the motion pictures specified in the Schedule, but only at the said Theatre in accordance with the terms and conditions hereof.

Vitagraph, Inc.
By Harry Goldman.

(The above signature of Vitagraph, Inc., is made only for the purpose of authenticating this application and is not an acceptance thereof.)

W. C. Bloom,
By P. Blaekin,
Exhibitor.

The foregoing application is hereby accepted.

Vitagraph, Inc.
By G. L. Sears,
General Manager of Distribution.

Date—Dec. 31, 1940.

2955 Page One

Warner Bros. and First National Productions
Season 1940-1941

Exhibition Contract

Agreement of license under copyright made in one or more counterparts between Vitagraph, Inc., a corporation (hereinafter referred to as the Distributor), party of the first part, and the Exhibitor, (hereinafter named and referred to as the Exhibitor, operating the theatre hereinafter designated), party of the second part,

Witnesseth: The parties hereto agree as follows:

License—First: The Distributor grants the Exhibitor and the Exhibitor accepts, a limited license under the respective copyrights of the motion pictures designated and described in the Schedule hereof and under the copyright of any matter included in any sound recorded therewith, to exhibit publicly said motion pictures and to reproduce for public performances such recorded sound in synchronism therewith, but only at the said theatre for the number of consecutive days specified in the Schedule and for no other use or purpose; provided that the reproducing equipment in the said theatre will operate reliably and efficiently to reproduce such recorded sound with adequate volume and high quality; and provided further that if copyrighted musical compositions are included in such recorded sound, the Exhibitor will have at the date or dates of the exhibition of each such motion pictures a license from the copyright proprietor thereof or from any licensee of such copyright proprietor to perform publicly the said copyrighted musical compositions. If more than one theatre is hereinafter designated the said motion pictures are licensed for exhibition at only one of such theatres unless otherwise in the Schedule specifically provided in writing.

Term and Warranty—Second: (a) The term of this Agreement shall begin with the date fixed or determined for the exhibition at the said theatre of the first motion picture deliverable hereunder and shall continue for a period of one year thereafter unless otherwise in the Schedule provided. The Distributor agrees during said term to de-

liver to the Exhibitor, and the Exhibitor agrees to exhibit at said theatre during said term upon the date or dates herein provided for, a positive print of each of said motion pictures except such as may be excluded as provided in clauses Fifteenth and Seventeenth hereof. The Distributor warrants that each positive print will be in good physical condition for projection and exhibition, and will clearly reproduce the recorded sound in synchronism therewith if properly used upon standard reproducing equipment. If the recorded sound is not recorded upon a print, all references herein to a print shall be deemed to include the records, discs and any other device upon which sound may be recorded for reproduction with the exhibition of a print.

Damages—Failure to Deliver—(b) If the Distributor shall fail or refuse to deliver, or the Exhibitor shall fail or refuse to exhibit during the term hereof, any of said motion pictures, excepting those which may be eliminated as provided in Clause Fifteenth hereof, and those which may not be generally released as provided in Clause Seventeenth hereof or if the Distributor shall willfully violate any of the provisions of Clause Seventh hereof or shall deliver to the Exhibitor a print of any motion picture which print shall be determined was not in condition for exhibition and for the reproduction of sound as provided in Clause Second, the Exhibitor or the Distributor, as the case may be, shall pay the damage so caused and if such damage cannot be definitely computed shall pay as liquidated damages a sum equal to the fixed sum herein specified as the rental of each such motion picture or a sum computed as provided in Clause Third (c) hereof, if the rental of any such motion picture is to be determined, either in whole or in part upon a percentage of the admission receipts of said theatre or any part thereof or upon a percentage of such receipts and a fixed sum; provided that any claim by the Exhibitor with respect to the condition of a print shall be deemed to have been waived by the Exhibitor unless notice of such claim shall have been given by the Exhibitor to the Distributor's exchange from which the Exhibitor is served, by telephone or telegraph, or in person, immediately after the first public exhibition thereof by the Exhibitor and written confirmation thereof mailed by the Exhibitor upon the same day to the Distributor's said exchange.

Payment—Third: (a) Exhibitor agrees to pay for such license as to each such motion picture the fixed sums speci-

fied in the Schedule at least three (3) days in advance of the date of delivery of a print thereof at the Distributor's exchange or of the date of shipment to the Exhibitor from another exhibitor, unless after the acceptance of this application by the Distributor such payment shall be otherwise agreed to by the Distributor in writing signed by an officer of the Distributor. All payments hereunder shall be made to the Distributor at the City in which is located the exchange from which the Exhibitor is served.

Percentage Bookings—(b) If the rental of any such motion pictures is to be determined either in whole or in part upon the admission receipts of said theatre or any part thereof, the Exhibitor agrees to pay such rental immediately after the last exhibition upon the last date of the exhibition of each such motion picture or if requested by the Distributor at the end of each day's exhibition. In each such case the Exhibitor shall deliver to the Distributor immediately after the last exhibition upon each date of exhibition of each such motion picture a correct itemized statement of the gross receipts of said theatre for admission thereto upon each such date. Such statement shall be signed by the Exhibitor or the Manager or Treasurer of said theatre and the Cashier thereof and shall include a statement of such facts and figures as may be provided in the Schedule to be furnished by the Exhibitor, and if requested by the Distributor, shall be made upon forms furnished by the Distributor. Upon the exhibition date or dates of each motion picture an authorized representative of the Distributor is hereby given the right to verify the sale of all tickets of admission to said theatre, and the receipts therefrom; and for such purpose shall have access to the theatre, including the box office, and also the right to examine all relevant entries relating to such gross receipts in all the Exhibitor's books and records, and if hereunder it is provided that the Exhibitor make certain expenditures and or deductions, to examine all entries relating to such expenditures and or deductions. Such right of access and examination of the Exhibitor's books and records limited as aforesaid shall continue for a period of four (4) months after the receipt by the Distributor of each such statement. The Distributor agrees, unless such representative is in the continuous employ of the Distributor or employed as a checker, not to employ as a representative for such purpose any person a resident of or employed in the place where the said theatre

is located, other than a person engaged in business as an accountant. The Distributor agrees that any information obtained pursuant to the provisions of this clause will be treated as confidential, excepting in any arbitration proceeding or litigation in respect to this license.

Liquidated Damages—Percentage Bookings—(c) If the Exhibitor fails or refuses to exhibit any of said motion pictures as herein provided and the rental or any part thereof is to be computed in whole or in part upon a percentage of the admission receipts of said theatre, the Exhibitor shall pay the Distributor as liquidated damages for each day the Exhibitor fails or refuses to exhibit such motion pictures, in addition to any fixed sums payable hereunder in respect of such motion picture, a sum equal to such percentage of the average daily gross receipts of such theatre on each date any feature motion picture distributed by the Distributor was exhibited thereat during the period of ninety (90) days prior to the date or dates when said motion picture should have been so exhibited hereunder, or if no feature motion picture distributed by the Distributor was exhibited at such theatre during said ninety day period, then a sum equal to such percentage of the average daily gross receipts of such theatre during the period of thirty operating days immediately prior to the date or dates when such motion pictures should have been exhibited, or prior to the date of such failure or refusal to exhibit any of said motion pictures; provided that if the Exhibitor shall exhibit such motion pictures for less than the full number of days provided for in the Schedule, for each day less than said full number of days, the sum equal to such percentage shall be computed upon a sum equal to sixty-five (65%) percent of the gross receipts of said theatre during the last day of the exhibition thereat of such motion picture. A sworn statement of the said daily gross receipts shall be delivered by the Exhibitor to the Distributor upon demand therefor.

Delivery and Return of Prints—Fourth: (a) After each of said motion pictures is generally released for public exhibition and becomes available for exhibition hereunder by the Exhibitor, the Distributor agrees to deliver as hereinafter provided, a print thereof to the Exhibitor.

(b) The public exhibition of any of said motion pictures for three (3) consecutive days at prices usually charged for admission to the theatre where so exhibited in the territory wherein is located the exchange from which the exhibitor is

served, excepting any "road show", "tryout", "preview" or "pre-release exhibitions thereof, shall be deemed the general release for public exhibition of such motion picture but only in such territory. A "pre-release" exhibition shall be deemed any exhibition because of seasonal conditions making desirable exhibitions in advance of general release as herein defined.

(c) The Exhibitor agrees to exhibit each of said motion pictures in the order of its general release by the Distributor in the exchange territory in which said theatre is located. The Exhibitor shall have the right to select any of the motion pictures, excepting the last deliverable hereunder, for exhibition out of the order of its general release, subject to prior runs and or clearance granted other exhibitors, on the date or dates determined as provided in Article Sixth hereof or otherwise agreed upon, but only upon the following conditions (a) that the exhibitor is not in default hereunder and shall have fully complied with all the provisions, if any, set forth in the Schedule for the exhibition of one or more of said motion pictures at specified intervals; and (b) that the Distributor and the Exhibitor shall then agree upon the date or dates upon which all of the motion pictures generally released prior to the general release of such motion picture and available for exhibition hereunder shall be exhibited by the Exhibitor, which date or dates shall be within thirty (30) days from the first exhibition date of the motion picture to be exhibited out of the order of its general release; or in the alternative the Exhibitor shall then pay to the Distributor the license fee for each of such motion pictures then generally released and available for exhibition hereunder, and as to any thereof which shall not be exhibited by the Exhibitor within thirty days from the first exhibition date of the motion picture to be exhibited out of the order of its general release, the grant of the run and clearance period in respect thereof shall be deemed waived by the Exhibitor. Upon the failure or refusal of the Exhibitor to exhibit any of such motion pictures then generally released and available for exhibition hereunder within said thirty day period or to pay the license fee thereof, the right of the Exhibitor to thereafter select for exhibition any motion picture out of the order of its general release shall be forfeited. The provisions of this paragraph (c) shall not be deemed to limit or qualify the provisions

of Article Sixth hereof excepting as in this paragraph (c) specifically provided.

(d) The Distributor shall make deliveries hereunder to the Exhibitor or to the Exhibitor's authorized agent, by delivery at the Distributor's exchange, or to a common carrier, or to the United States Postal authorities. If deliveries are made to a carrier or to a post office, they shall be made in time for prints to reach the place where the said theatre is located in time for inspection and a projection thereof before the usual time for opening said theatre.

(e) Exhibitor agrees to return immediately after the last exhibition on the last date of exhibition licensed, each print received hereunder, with its reels and containers, to the exchange of the Distributor from which the Exhibitor is served or as otherwise directed by the Distributor in the same condition as when received, reasonable wear and tear due to proper use excepted. Exhibitor agrees to pay all costs of transportation of such prints, reels, and containers from the Distributor's exchange or the last previous exhibitor having possession of the same, and return to the Distributor's exchange; or if directed by the Distributor, to ship such positive prints elsewhere than to the Distributor's exchange transportation charges collect. It is agreed that the delivery of a positive print properly directed and packed in the container furnished by the Distributor therefor, to a carrier designated or used by the Distributor and proper receipt therefor obtained by the Exhibitor, shall constitute the return of such positive print by the Exhibitor.

(f) If the Exhibitor fails to or delays the return of any positive print to the Distributor or fails to forward or delays forwarding (as directed by the Distributor) any such print to any other exhibitor, the Exhibitor agrees to pay the Distributor the damage, if any, so caused the Distributor and in addition the damage, if any, so caused such other exhibitor. The Exhibitor shall have the right to participate in any compromise of or intervene in any arbitration or legal proceeding based upon any claim for such damage asserted against the Distributor by another exhibitor; notice of which shall be given the Exhibitor by the Distributor.

Loss and Damage to Prints—Fifth: The Exhibitor shall pay to the Distributor a sum equal to the cost of replacement at the Distributor's exchange for each linear foot of any print, lost, stolen or destroyed or injured in any way in the interval between the delivery to and the return

thereof by the Exhibitor in full settlement of all claims for such loss, theft, destruction or injury. Such payment, however, shall not transfer title to or any interest in any such positive print to the Exhibitor or any other party, nor release the Exhibitor from any liability arising out of any breach of this agreement. The Distributor shall at the option of the Exhibitor repay or credit to the Exhibitor any sum paid by the Exhibitor for any loss or stolen print, excepting "news reels", upon the return of such loss or stolen print to the Distributor within sixty (60) days after the date when the same should have been returned hereunder. The Exhibitor shall not be liable for the damage or destruction of any print, provided the Exhibitor establishes such damage or destruction occurred while in transit from the Exhibitor and delivery thereof was made as hereinabove provided. The Exhibitor shall immediately notify the Distributor's exchange by telegram of the loss, theft or destruction of or damage or injury to any print. If any print shall be received from the Exhibitor by the Distributor or any subsequent exhibitor in a damaged or partially destroyed condition it shall be deemed to have been so damaged or destroyed by the Exhibitor unless the latter, immediately after the first public exhibition thereof shall have telegraphed the Distributor's exchange that such print was received by the Exhibitor in a damaged or partially destroyed condition, and setting forth fully the nature of such damage and the amount of footage so damaged or destroyed.

Selection of Play Date—Sixth: Unless otherwise agreed upon or unless definitely specified or otherwise provided for in the Schedule, the exhibition date or dates of each of said motion pictures shall be determined as follows:

1. Subject to the prior runs and/or clearance granted or hereafter granted by the Distributor to other exhibitors and within a reasonable time after a print or prints of any of said motion pictures are received at the exchange of the Distributor out of which the exhibitor is served, and provided the Exhibitor is not in default hereunder, the Distributor shall mail to the Exhibitor a notice in writing of the date when each such motion picture will be available for exhibition by the Exhibitor (which date is hereinafter referred to as the "available date"). Such notice shall be mailed to the Exhibitor at least fifteen (15) days before the available date therein specified.

2. Within fourteen (14) days after the mailing of such notice, the Exhibitor shall select an exhibition date or dates not theretofore assigned to another exhibitor or other exhibitors, within the period commencing upon the available date and ending thirty (30) days thereafter and give to the Distributor written notice of the date or dates so selected.

3. Upon the failure of the Exhibitor to so select such date or dates the Distributor shall designate such date or dates by mailing written notice thereof to the Exhibitor.

Clearance and Run—Seventh: The Distributor agrees not to exhibit or grant a license to exhibit any of said motion pictures for exhibition in conflict with the "run" or prior to the expiration of the "clearance period" if any in the Schedule specified at any theatre therein named or within the territorial limits therein specified. Such period of clearance as to each of said motion pictures shall be computed from the last date of the exhibition thereof licensed hereunder. If clearance is granted against a named theatre or theatres indicating that it is the intention of the Distributor to grant such clearance against all theatres in the immediate vicinity of the Exhibitor's theatre then unless otherwise provided in the Schedule, such clearance shall include any theatre in such vicinity thereafter erected or opened.

Description of Pictures—Eighth: (a) The Distributor shall have and hereby reserves the right in the sole discretion of the Distributor to change the title of any of the said motion pictures, to make changes in, alterations and adaptation of any story, book or play and to substitute for any thereof any other story, book or play. The Distributor also shall have and hereby reserves the right to change the director, the cast or any member thereof of any of said motion pictures.

(b) The Exhibitor shall not be required to accept for any feature motion picture described in the Schedule as that of a named star or stars, director or named well-known author, book or play, any motion picture of any other star or stars, director, author, book or play nor to accept any other feature motion picture in place of any thereof which in the Schedule is designated "no substitute". The right of rejection conferred on the Exhibitor by this Clause is in addition to the right of exclusion provided in Clause Fifteenth hereof.

(c) The Distributor warrants that none of said motion

pictures are reissues of old negatives, old negatives retitled, excepting those specifically specified as such in the Schedule; and further that none of said motion pictures contains or will contain any advertising matter for which compensation is received by the Distributor, or any subsidiary or affiliate of the Distributor. Distributor also warrants that such of said motion pictures as may be foreign produced will be produced with an American star in the English language by a producer affiliated with Distributor and directed by an American director.

Advertising Prior to First Run—Ninth: (a) If the Exhibitor is granted a subsequent run of the said motion pictures, the Exhibitor shall not advertise any thereof by any means of advertising prior to or during the exhibition of any one of said motion pictures by any other exhibitor having the right to a prior run thereof. Nothing in this Clause shall be deemed to prohibit the Exhibitor from advertising generally all of said motion pictures as a group but such general advertising shall not refer to any one of said motion pictures during its exhibition by any other exhibitor having the first or immediately prior run thereof, excepting as herein provided.

(b) The Exhibitor shall not advertise by any means of advertising any of said motion pictures which may be road-shown by the Distributor and not excepted and excluded from this license, until after the completion of such road showing in the United States, and then only as permitted in paragraph (a) of this Clause.

(c) For a breach of the provisions of this Clause the Distributor shall have in addition to all other rights the right to exclude from this license any motion picture advertised in violation of the provisions hereof by written notice to such effect mailed to the Exhibitor and upon the mailing of such notice the license of such motion picture shall terminate and revert to the Distributor, unless arbitration is herein provided for and immediately upon the receipt of any such notice of exclusion the Exhibitor by written notice given to the Distributor shall deny breaching any of the provisions of this Clause, in which case the question of fact raised by such denial shall be determined by arbitration.

Acceptance by Distributor—Tenth: Until accepted in writing by an officer of or any person authorized by the Distributor and notice of acceptance sent to the Exhibitor

this instrument shall be deemed only an application for a license under Copyright, and may be withdrawn by the Exhibitor any time before such acceptance. Unless such notice of acceptance is sent the Exhibitor by mail or telegraph within fifteen (15) days after the date thereof, if the said theatre of the Exhibitor is located East of the Mississippi River, and within thirty (30) days after the date thereof if located west of said river, said application shall be deemed to have been withdrawn. The deposit by the Distributor of any check or other consideration given by the Exhibitor at the time of application as payment for any purpose or the delivery of a print of any said motion pictures shall not be deemed an acceptance hereof by the Distributor.

Changes in Writing—Eleventh: This license agreement is complete and all promises, representations, understandings and agreements in reference thereto have been expressed herein. No change or modification hereof shall be binding upon the Distributor unless in writing signed by an officer of the Distributor, excepting in an emergency and only then, a change or modification may be consented to in writing but only by the representative of the Distributor managing the Distributor's exchange out of which the Exhibitor is served provided such change or modification does not change or modify the run, and or clearance period, or decrease any rental, or eliminate any motion picture specified in the Schedule.

Assignment on Sale of Theatre—Twelfth: This license shall not be assigned by either party without the written consent of the other, provided, that if the Exhibitor sells the said theatre or transfers any interest therein and is not in default hereunder, the Exhibitor may assign this license to the purchaser of the theatre or of such interest without the written consent of the Distributor but any such assignment shall not be valid or of any effect hereunder unless a written acceptance thereof by the assignee assuming the obligations of the Exhibitor shall be delivered to the Distributor. Any such assignment shall not release the Exhibitor from any liability hereunder less such release from liability is consented to by the Distributor in writing.

Taxes—Thirteenth: The Exhibitor shall pay to the Distributor upon demand, any tax, fee or other like charge now and/or hereafter imposed or based upon the delivery and/or the exhibition of prints of motion pictures and/or

upon the sums payable under this license by the Exhibitor to the Distributor. If under any statute or ordinance any such tax, fee or other like charge is or shall be payable or paid by the Distributor and the exact amount payable hereunder by the Exhibitor is not therein definitely fixed or cannot be exactly determined, then the Exhibitor shall pay such part of any such tax, fee or other like charge paid or payable by the Distributor as shall be fixed in the manner determined by the then President of the American Arbitration Association.

Prevention of Performance—Fourteenth: If the Exhibitor shall be prevented from exhibiting or the Distributor from delivering any of the said motion pictures for causes beyond their direct control then this license in respect to each such motion picture shall terminate and revert to the Distributor without liability on the part of either party, provided reasonable written notice of such termination and the cause thereof is given.

Option to Exclude If Group Licensed—Fifteenth: (a) If in this license agreement the total number of feature motion pictures offered to the Exhibitor by the Distributor, at one time, shall have been licensed by the Distributor hereunder and the license fees of all thereof average not more than Two hundred and fifty ($250.00) Dollars, the Exhibitor shall have the privilege to exclude from this license agreement not to exceed ten (10%) percent of the total number of feature motion pictures licensed hereunder; provided that the Exhibitor

(1) Is not in default hereunder, and

(2) Shall have fully complied with all of the provisions, if any, set forth in this agreement for the exhibition of such feature motion pictures at specified intervals.

(b) Such privilege of exclusion may be exercised only upon the following terms and conditions:

(1) The Exhibitor shall give to the Distributor written notice of the Exhibitor's election to exclude any of said feature motion pictures within fourteen (14) days after the general release date thereof in the exchange territory out of which the Exhibitor is served.

(2) The Exhibitor may exclude without payment therefor one (1) motion picture out of each group of ten (10) of the number of feature motion pictures specified in this license agreement provided the Exhibitor has paid for the other nine (9) of such group.

(3) If such privilege of exclusion is not exercised as provided in paragraph (b) (2) above, the Exhibitor may nevertheless exercise such privilege by paying the license fee of each motion picture excluded with the notice of its exclusion. In such case, such payment shall be credited against such tenth or succeeding tenth motion picture, as the case may be, which the Exhibitor would otherwise be privileged to exclude as provided in paragraph (b) (2) above.

If the only or last group licensed is less than ten (10) and more than five (5) motion pictures, the privilege to exclude shall apply provided the Exhibitor has paid for all motion pictures but one in such group.

(c) Upon the failure or refusal of the Exhibitor to comply with any term or condition of this license agreement, or to comply with any arbitration award in respect thereto, the privilege of exclusion forthwith shall be revoked and the Exhibitor shall be liable for and pay to the Distributor the license fees of all motion pictures theretofore excluded.

(d) If the license fee of any feature motion picture specified in this license agreement is to be computed in whole or in part upon a percentage of the receipts of the Exhibitor's theatre; such license fee (for the purpose of computing the average license fee of all the motion pictures licensed) shall be determined as follows:

(1) Average the license fees of all of the Distributor's feature motion pictures exhibited upon a percentage basis at the Exhibitor's theatre during the period of one year prior to the term of this license agreement.

(2) If none of the Distributor's feature motion pictures were exhibited upon a percentage basis at such theatre during said period, average the license fees of all feature motion pictures exhibited upon a percentage basis at such theatre during the said period.

(e) If the rental of any motion picture excluded is to be computed in whole or in part upon a percentage of the receipts of the Exhibitor's theatre, the sum to be paid by the Exhibitor as provided in paragraph (b) (3) hereof shall be determined as follows:

(1) Average the gross receipts of all the Distributor's feature motion pictures exhibited at the Exhibitor's theatre during the ninety (90) day period preceding the Exhibitor's notice of exclusion, and apply to such average the

percentage terms specified in this license agreement for the picture excluded.

(2) If no feature motion pictures of the Distributor were exhibited at the Exhibitor's theatre during said ninety (90) day period, average the daily gross receipts of the Exhibitor's theatre for the period of thirty (30) operating days preceding the Exhibitor's notice of exclusion and apply to such average the percentage terms specified in this license agreement for the picture excluded.

(f) In computing the number of feature motion pictures which may be excluded hereunder, fractions of more than one-half (½) shall be regarded as one (1).

(g) Upon the exclusion of each feature motion picture, the license therefor and all rights thereunder shall terminate and shall revert to the Distributor.

First Run Exhibitions—Sixteenth: (a) If the Exhibitor is granted a first run of the said motion pictures, the Exhibitor shall exhibit each of the feature motion pictures excepting those described in Paragraph (d) of this Clause within the period beginning with the date scheduled and announced by the Distributor for the general release of each feature motion picture in the territory wherein is located the exchange of the Distributor out of which the Exhibitor is served and ending one hundred and twenty (120) days thereafter, notwithstanding any provision of Clause Sixth hereof to the contrary. If the first exhibition date of any of the said motion pictures shall occur on a date later than ninety (90) days after its scheduled and announced general release date, then the period of clearance of such motion picture shall be reduced so as to expire one hundred and twenty (120) days after said scheduled date of its general release. If the Exhibitor is granted a first run of the said motion pictures and the Exhibitor fails to exhibit any feature motion picture within said period of one hundred and twenty (120) days, the grant of the said first run and the clearance period in respect thereof shall be deemed waived by the Exhibitor and the license fee as to such feature motion picture shall thereupon forthwith become due and payable to the Distributor, with the right to the Exhibitor to exhibit such feature motion picture as hereinafter in Paragraph (e) of this Clause provided.

Second Run Exhibitions—(b) If the Exhibitor is granted a second run of the said motion pictures and any other exhibitor having been granted the first run thereof imme-

diately prior to such second run fails to exhibit any of the feature motion pictures, excepting those described in Paragraph (d) of this Clause within the said period of one hundred and twenty (120) days specified in Paragraph (a) of this Clause, the Exhibitor shall exhibit each such feature motion picture within the period beginning with the date of the expiration of the said one hundred and twenty (120) days period and ending fourteen (14) days thereafter, notwithstanding any provision of Clause Sixth hereof to the contrary. If the Exhibitor is granted a second run of the said motion pictures and the Exhibitor fails to exhibit any feature motion picture within said fourteen (14) days period the grant of such second run and the clearance period if any in respect thereof shall be deemed waived by the Exhibitor and the license fee as to such feature motion picture shall thereupon forthwith become due and payable to the Distributor with the right to the Exhibitor to exhibit such feature motion picture as hereinafter in Paragraph (e) of this Clause provided.

Subsequent Runs Exhibitions—(c) If the Exhibitor is granted a run subsequent to a second run of the said motion pictures and any other Exhibitor having been granted the second run thereof immediately prior to such subsequent run fails to exhibit any of the feature motion pictures, excepting those described in Paragraph (d) of this Clause within the said period of fourteen (14) days specified in Paragraph (b) of this Clause the Exhibitor shall exhibit each feature motion picture within the period beginning with the date of the expiration of the said fourteen day period and ending seven (7) days thereafter, notwithstanding any provision of Clause Sixth hereof to the contrary. If the Exhibitor is granted a run subsequent to a second run of the said motion pictures and the Exhibitor fails to exhibit any feature motion picture within said seven (7) day period, the grant of such subsequent run and the clearance period if any in respect thereof shall be deemed waived by the Exhibitor and the license fee as to such feature motion picture shall thereupon forthwith become due and payable to the Distributor with the right to the Exhibitor to exhibit such feature motion picture as hereinafter in Paragraph (e) of this Clause provided.

Extended Runs—(d) Any of the motion pictures which shall have been exhibited at any theatre in the said territory for more than one show week prior to the run granted

the Exhibitor shall be excepted from the provisions of this Clause and of Paragraph (b) of Clause Fourth.

Exhibition After Revocation of Run and Clearance—(e) Upon the waiver of the grant of the run and/or the clearance period of any feature motion picture as provided in Paragraphs (a), (b) or (c) of this Clause, the Exhibitor upon payment of the sum or sums payable hereunder as provided in this Clause for the license to exhibit such feature motion picture, shall have the right to exhibit the same hereunder upon a date or dates not in conflict with any run and/or clearance period granted or hereafter granted to other exhibitors, upon written request mailed or delivered to the Distributor within sixty (60) days after the last date upon which such feature motion picture should have been exhibited by the Exhibitor as provided in this Clause. Failing to make such request within said period of sixty (60) days the license to exhibit such feature motion picture granted hereunder shall terminate and revert to the Distributor.

If the provisions of this Clause shall in anywise be in conflict with the provisions of any other license agreement made and entered into by the Distributor with any other exhibitor prior to September 1, 1933, the provisions of this Clause shall be deemed to be subordinate and subject to the provisions of such other license agreement.

Pictures Not Generally Released—Seventeenth: If any of the said motion pictures described in the Schedule, excepting those, if any, which may be roadshown by the Distributor, shall not be generally released by the Distributor for distribution in the United States during the period beginning September 1, 1940, and ending August 31, 1941, each such motion picture shall be excluded from this license, upon written notice to such effect given to the Exhibitor by the Distributor prior to fifteen (15) days before the end of said period, unless the Exhibitor shall give written notice to the Distributor not later than thirty (30) days after the end of said period that the Exhibitor elects to exhibit hereunder all such motion pictures if generally released during the year immediately following the end of said period. If such notice of election is given as aforesaid the Distributor shall deliver and the Exhibitor shall exhibit each of such motion pictures upon the terms and conditions of this license excepting that any thereof which are not so generally released within the said following year shall also be ex-

cepted and excluded from this license. In such case the Distributor may exhibit and license for exhibition each of such motion pictures so excluded when and where desired by the Distributor and all claims of the Exhibitor in respect thereof are hereby expressly waived and the Distributor released and discharged therefrom by the Exhibitor.

Remedies for Breach—Eighteenth: If the Exhibitor shall fail or refuse to pay the rental of any of such motion pictures as provided in this license or to furnish statements of the receipts of said theatre, if any are required hereunder, or to give the Distributor's representative access to the said theatre or its box office and or the Exhibitor's books and records relative to motion pictures the rentals of which are based upon the said theatre's admission receipts as herein provided, or if the Exhibitor shall exhibit or permit the exhibition of any of said motion pictures at any time or place other than as herein specified, or if the Exhibitor becomes insolvent or is adjudicated a bankrupt, or executes an assignment for the benefit of his creditors, or if a receiver is appointed for any of the property of the Exhibitor, or if the Exhibitor voluntarily or by operation of law should lose control of the said theatre or of his said interests therein making it impossible for the Exhibitor to exhibit the said motion pictures at the said theatre, then upon the happening of any one or more of said events, the Distributor may at its option, (1) terminate this license agreement, or (2) suspend the delivery of additional motion pictures hereunder until such default or defaults should cease and be remedied. It is agreed that the exercise of any of said remedies by the Distributor shall be in addition to and without prejudice to any right or remedy of the Distributor against the Exhibitor at law or in equity and or otherwise provided for in this license agreement.

Cutting or Alteration of Prints—Nineteenth: The Exhibitor shall exhibit each print in its entirety and shall not copy, duplicate, subrent or part with possession of any print. The Exhibitor shall not cut or alter any print, excepting to make necessary repairs thereto, or when required by any duly constituted public official or authority or with the written or telegraphic consent of the Distributor. The Exhibitor however may cut the print of a news reel, and in such case shall completely restore all parts cut therefrom, prior to the return thereof to the Distributor or shipment

elsewhere if so directed by the Distributor, in the same condition as received by the Exhibitor.

Midnight Shows—Twentieth: The license herein granted for the number of days specified in the Schedule shall not include the right of exhibition at any time previous to dawn of the first licensed and booked date of exhibition without securing express written permission hereunder.

Roadshows—Twenty-First: (a) The Distributor shall have the right to exhibit and or cause to be exhibited as a "roadshow", at any time prior to the exhibition thereof hereunder, such of the motion pictures licensed hereunder as the Distributor may from time to time select and determine, provided, however, that such roadshow exhibitions shall be at theatres at which admission prices for evening performances, during such exhibitions thereof, of not less than one dollar shall be charged for the majority of the orchestra seats, and further provided that, except in the cities of New York and Los Angeles, not more than two of such motion pictures shall be so roadshown.

(b) If and when any such roadshow exhibition shall be in the City of New York and or the City of Los Angeles, and if the Exhibitor's theatre is situated in the territory then served by the Distributor's exchange or exchanges located in New York or in Los Angeles, as the case may be, the Distributor shall have the right to except and exclude from this license not to exceed two of such motion pictures so roadshown in each or both of said territories, upon sending to the Exhibitor written notice to such effect not later than four (4) weeks after the commencement of such roadshow exhibition and provided that the Distributor shall by like notice, except and exclude such motion picture from all other license agreements containing this Clause and licensing the exhibition of such motion picture in such territory. The exception and exclusion of any such motion picture in the territory then served by the Distributor's exchange or exchanges located in the City of Los Angeles, or in the City of New York, as the case may be, shall not be deemed to require the Distributor to except and exclude the same motion picture in both of said territories.

(c) If and when any such roadshow exhibition, excepting those in the City of New York and or in the City of Los Angeles, shall be in the territory served by the Distributor's exchange or exchanges serving the Exhibitor's theatre, the Distributor shall have the right to except and

exclude from this license not to exceed two of such motion pictures so roadshown upon sending to the Exhibitor written notice to such effect within seven (7) days after the commencement of such roadshow exhibition and provided that the Distributor shall by like notice except and exclude each such motion picture from all other license agreements containing this Clause and licensing the exhibition of such motion picture in such territory.

(d) The inadvertent omission to send to any such other exhibitor the notice provide for in Paragraphs (a) and (b) of this Clause shall not be deemed to affect the exception and exclusion from this license of any such motion picture.

(e) The Distributor may so exercise such right to except and exclude any such motion picture from time to time, in the respective territories, as above defined, in the United States. Any motion picture so roadshown in any place in the United States, and not excepted and excluded from this license as aforesaid, shall not be deemed available for exhibition hereunder until after the completion of such roadshowing of such motion picture in the United States, and such motion picture shall be exhibited hereunder when generally released by the Distributor and as and when available for exhibition by the Exhibitor, and the term of this license agreement specified in Clause Second shall be in respect to each such motion picture, extended to and including the date or dates of exhibition by the Exhibitor hereunder of each thereof.

(f) For each motion picture that the Distributor shall except and exclude, as aforesaid, the Exhibitor is hereby granted the option to except and exclude from this license (in addition to those which may be excluded as provided in Clauses Fifteenth and Seventeenth) one of the other motion pictures licensed hereunder, but only if the Exhibitor shall give to the Distributor written notice to such effect not later than fourteen days before the date fixed for the exhibition hereunder of such other motion picture. The Distributor may exhibit and or license the exhibition of any and all motion pictures excepted and excluded from this license by the Distributor and or the Exhibitor, as aforesaid, when and where desired by the Distributor, free from all claims of the Exhibitor in respect thereof and the license of each thereof shall forthwith upon exclusion as hereinbefore provided terminate and revert to the Distributor.

Arbitration—Twenty-Second: The Exhibitor and the Distributor respectively, freely and voluntarily agree that as

a condition precedent to the commencement of any action or proceeding in any court by either of them to determine, enforce or protect the legal rights of either hereunder, each shall submit all claims and controversies arising hereunder for determination by arbitration to an Arbitration Board (hereby expressly waiving the oath of the arbitrators) which shall consist of four members, each of whom shall be engaged in the motion picture business and two of whom to be appointed by the Exhibitor, and the remaining two to be appointed by the Distributor.

Upon the written request of the Distributor or the Exhibitor for the arbitration or any dispute or controversy arising hereunder, the party making such request shall name therein two arbitrators stating the business address and business or business connection of each and shall designate therein the date, time and place of the hearing of such controversy. The date of such hearing shall not be earlier than seven (7) days from the date of the sending of such notice, unless it shall be claimed in such notice that irreparable injury will result unless there is a speedy determination of such controversy in which case such hearing may be designated to be held earlier than said seven (7) day period.

Within five (5) days after the mailing of such request for arbitration, the party upon whom such request is made shall name two arbitrators in a written notice mailed or delivered to the other party, stating therein the business address and business or business connection of each arbitrator. If either party fails or refuses to name the arbitrators as herein provided or if any arbitrator so named shall fail or refuse to act, or be unable to serve or shall be challenged and others are or another arbitrator qualified and then available to act is not then appointed, others or another arbitrator may be appointed by the other party as the case may be.

No member of the Arbitration Board shall hear or determine any controversy in which he has an interest direct or indirect and any member having such interest shall be disqualified to act.

If the arbitrators or a majority of them are unable to reach a decision, then they, or a majority of them shall immediately select an umpire who shall not be engaged in the motion picture business. In such case the hearing before the umpire shall be at such time and place as the umpire shall designate and shall be had before the umpire alone.

the arbitrators not to be permitted to attend the hearing before the umpire. If the arbitrators or a majority of them are unable to agree upon the selection of an umpire, the American Arbitration Association shall be requested to make such selection.

The Arbitration Board shall have general power to determine such dispute or controversy as shall be submitted, to make findings of fact in respect thereof and to direct specific performance of a contract, and or that the same has been breached in whole or in part, and or that damages on such account shall be paid. The Board of Arbitration shall have the power only to give force and effect to the provisions of this license agreement and the rights or obligations of the parties thereunder; provided that if after a full hearing of any controversy submitted for arbitration hereunder, excepting any submission to an umpire designated as hereinabove provided, the artbitrators or a majority of them are of the opinion that because of unusual circumstances arising after the execution of this license agreement and beyond the direct control of the parties hereto disclosed at such hearing, a strict enforcement of the provisions of this license agreement would impose undue hardship upon one of the parties, the arbitrators or a majority of them may recommend in writing to the parties a settlement of such controversy upon such terms and conditions deemed by the arbitrators fair and just. If such settlement is not agreed to by the parties within five (5) days after the receipt of a copy of such recommendation, the controversy shall be deemed withdrawn from the arbitrators and shall be submitted with a written statement of all the facts adduced at the hearing before the arbitrators together with all documentary evidence to the National Appeal Board in New York. The disposition by the National Appeal Board of any such recommendation shall be final and binding upon the parties hereto.

The hearing of any such controversy shall be had before the Arbitration Board in the city wherein is situated the exchange of the Distributor from which the Exhibitor is served, unless the parties agree in writing that such hearing be had in some other place. If either party fails or refuses to submit to arbitration any such claim or controversy, the other party may apply to a United States District Court, or to any other court, including a court of a state in which such hearing would otherwise not be had, for an order to proceed to arbitrate in which case such

hearing shall be had in such place as the court to which supplication is made may lawfully direct.

The parties hereto further agree to abide by and forthwith comply with any decision or award of the arbitrators, or a majority of them and consent that any such decision or award shall be enforceable in or by any Court of competent jurisdiction pursuant to the law of such jurisdiction now or hereafter in force.

If the Exhibitor shall fail or refuse to submit to arbitration any such claim or controversy or to abide by and comply with the award of the arbitrators in respect thereto, within seven (7) days, the Distributor may at its option suspend the deliveries of the motion pictures provided for in this and in each other existing license agreement between the parties hereto and or terminate this and each such other license agreement; and upon such termination the aggregate of the license fees of all motion pictures specified in this and any other such license agreement then not exhibited forthwith shall become due and payable by the Exhibitor.

If the Distributor shall fail or refuse to submit to arbitration any such claim or controversy or to abide by and comply with the decision or the award of an Arbitration Board in respect thereto within seven (7) days, the Exhibitor may at the option of the Exhibitor terminate this and any other existing license agreement between the parties hereto by mailing a notice to such affect to the Distributor within seven (7) days after such failure or refusal; and the Exhibitor shall have the rights and remedies provided in Clause Second (b) for failure to deliver motion pictures.

Any such termination by either party shall be without prejudice to any other right or remedy which the party so terminating may have by reason of any breach by the other party to this or any other existing agreement between the parties.

Each of the parties hereto, without notice to the other, may apply to any Court having jurisdiction to make this agreement to arbitrate a rule or order of such Court.

Exhibition Contract Continued on Page Two

2956 (Filed Oct. 11, 1944, Roy H. Johnson, Clerk.)

The following is Film License Agreement between Paramount Pictures Inc. and Jackson Park Theatre dated October 7, 1939, from Pl. Ex. 14:

2957 PLAINTIFFS' EXHIBIT 14.

(Page 2) Exchange Chicago Theatre Jackson Park
City & State Chicago, Ill.

Twentieth: The following Schedule and all of the written and printed parts thereof are a part of this license.

Schedule

47 Group S-11

There are licensed for exhibition hereunder all of the motion pictures of feature length which shall be generally released by the Distributor for distribution to motion picture theatres in the United States during the year commencing September 1, 1939, and ending August 31st, 1940, (for all purposes to be known as Group S-11 feature motion pictures) except the feature length motion picture cartoon entitled "Gulliver's Travels"; except the motion pictures as to which Distributor is required by contract to obtain the consent or approval of the Producer thereof, or other party to the terms and conditions of licensing the exhibition thereof and except foreign pictures (as such term is hereinabove described) and Paramount's six (6) Hopalong Cassidys. The "road showing", "pre-view", "try-out" and or "pre-release" of any motion picture during the said year shall not be deemed a general release of said motion picture.

For the license to exhibit each of said motion pictures, the Exhibitor shall pay to the Distributor the following:

Number of Motion Pictures Offered—all Number of Motion Pictures Licensed—47 Classifications	Consecutive Days Run	License Fee or Minimum Guarantee Per Picture
"A" Two (2) photoplays	3/4	$150.00
"B" Seven (7) photoplays	2/3	100.00
"C" Twelve (12) photoplays	2/3	80.00
"D" Seventeen (17) photoplays	2/3	75.00
"E" Nine (9) photoplays	2/3	55.00

It is expressly understood and agreed that the Distributor does not license hereunder to the Exhibitor any particular motion picture but only those motion pictures are licensed

hereunder which shall be generally released by the Distributor as provided in the Schedule above; that the announcement book, work sheet, press sheet or any other announcement issued by the Distributor is issued for the purpose only of indicating what the Distributor plans to produce and does not constitute any warranty or representation that the motion pictures therein referred to or described will be generally released during the period provided in the Schedule.

Distributor shall have the right to designate from time to time, to the foregoing classifications the motion pictures licensed hereunder, regardless of the classification thereof made by the Distributor under any other license agreement.

It is expressly agreed that if any of the motion pictures licensed hereunder shall have been designated by Distributor for exhibition to any of the foregoing classifications, and the Exhibitor shall have exercised the right of exclusion of any thereof hereunder, then such designation by Distributor shall be deemed rescinded and Distributor may designate another motion picture from the motion pictures licensed hereunder for exhibition upon the terms applicable to the motion picture so excluded.

It is agreed that the license fees herein specified apply to each respective motion picture licensed hereunder according to the classification thereof by the Distributor, as above provided, and such license fees are not average license fees, regardless of the number of such motion pictures that may be released by the Distributor during the year commencing September 1, 1939 and ending August 31, 1940.

Trailers

There are licensed for exhibition hereunder all trailers (which term shall be deemed to mean films or prints not exceeding one (1) reel in length used for advertising and announcing the exhibition of feature motion pictures licensed hereunder) which shall be generally released by the Distributor to motion picture theatres in the United States in and after January, 1940, in respect of the feature motion pictures licensed hereunder. Each trailer shall be delivered to the Exhibitor in the manner herein provided for the delivery of feature motion pictures ____ days prior to the first exhibition date of the feature motion picture to which such trailer relates, and shall be returned

by the Exhibitor to the Distributor's Exchange, or as otherwise directed, as herein provided in respect of feature motion pictures, not later than the first exhibition date of such feature motion picture to which the trailer relates. For the license to exhibit each of such trailers the Exhibitor shall pay to the Distributor the following license fees:

Type of Trailers	No. of Trailers	Consecutive Day's Run	License Fee Per Trailer	Remarks
DeLuxe—				
Standard—				

The Exhibitor agrees to charge minimum admission prices per person to said theatre on the respective exhibition dates thereat of the motion pictures licensed hereunder as follows:

Evenings (After 6:30): Adults, Orchestra 25 Balcony
Children, Orchestra 10 Balcony

Matinees (Before 6:30): Adults, Orchestra 15 Balcony
Children, Orchestra 10 Balcony

If during any such period less than said admission prices is charged, the Distributor in addition to all other rights hereunder shall have the right: (a) to immediately terminate the license of the motion picture then being exhibited and/or of all the remaining motion pictures not theretofore exhibited hereunder, by written notice to such effect to the Exhibitor and upon the giving of such notice, the license of such motion picture and/or motion pictures shall forthwith terminate and revert to the Distributor and the Distributor may, at its option, declare such failure or refusal a breach of the entire contract entitling the Distributor to recover from the Exhibitor as damages therefor the license fees payable in respect of all motion pictures not theretofore exhibited hereunder; or (b) provided the exhibitor is granted herein a period of "clearance" to reduce such period by not to exceed one-half in respect to each of the motion pictures thereafter deliverable hereunder; or (c) provided no period of "clearance" is specified in the Schedule to withhold for a period not to exceed sixty (60) days notice of the date when each motion picture thereafter deliverable hereunder will be available for exhibition by the Exhibitor; and as to each such motion picture the "run" thereof, if any, granted the Exhibitor, shall be deemed revoked and the Exhibitor agrees to exhibit each

such motion picture after notice of the available date thereof upon the date or dates determined as provided in Clause Sixth hereof; and (d) if the license fee of any such motion picture is to be computed either in whole or in part upon a percentage of the gross admission receipts of said theatre, then the Exhibitor shall account to the Distributor for all admissions to said theatre during the exhibition of such motion picture upon the basis of the said admission prices specified above.

It is expressly understood and agreed that the above minimum admission prices are exclusive of any State, Federal or local tax which now is or may be imposed upon admission to the theatre or theatres licensed hereunder.

If the Exhibitor is granted hereunder a second or subsequent "run", the Exhibitor agrees to exhibit any motion picture licensed hereunder for any earlier run if the Distributor shall so require.

It is agreed that the term "gross receipts" as used in this agreement shall be deemed to mean all sums received by the Exhibitor for admission to the theatre or theatres licensed hereunder on the date or dates of exhibition of the respective motion pictures licensed hereunder, excluding only therefrom any tax imposed by governmental authority expressly upon admissions to said theatre or theatres which is required to be collected by the Exhibitor.

Exhibition Arrangement

The Exhibitor agrees to play or pay for if available, a minimum of 1 picture each week starting 11-26-39 and continue until the contract is completed.

The Exhibitor in all advertising and exploitation of each motion picture licensed hereunder, shall advertise and announce each such motion picture as "A Paramount Picture" or as otherwise directed by Paramount, and shall otherwise adhere to the form of announcement contained in the advertising matter issued by Paramount in respect of each such motion picture.

If, with respect to any motion picture licensed hereunder, the date or dates of exhibition selected, designated or otherwise agreed upon shall be a number of days less than the maximum number specified in the Schedule hereof, then the license hereby granted for such motion picture shall be automatically limited to the number of days or dates of exhibition so selected, designated or otherwise

agreed upon, regardless of the number of days specified in said Schedule.

The license hereby granted for the number of days specified in the Schedule hereof for each motion picture shall not be deemed to include:

(a) any right of exhibition at any time during said exhibition period prior to 6:00 A. M. on the date or first date of exhibition herein provided for unless exhibition prior to 6:00 A. M. on said date or first exhibition date is expressly granted in writing;

(b) any right of exhibition at any time other than on the respective date or dates of exhibition selected, designated or otherwise agreed upon, as provided herein, and confirmed in writing by the Distributor;

(c) any right of exhibition other than by means of a print of any such motion picture furnished to the Exhibitor by the Distributor for the express purpose of exhibition hereunder in the theatre or theatres selected, designated or otherwise agreed upon as herein provided and confirmed in writing by the Distributor.

It is agreed that the Distributor may at its option deliver to the Exhibitor C. O. D. any motion picture deliverable hereunder, and may add to said C. O. D. the amount of any past due indebtedness owing under this or any other agreement by the Exhibitor to the Distributor.

Run: 1st week of general release. same week as Lex

Clearance: New Woodlawn-Kimbark-Hamilton not to play before 2nd week of release.

Exchange Chicago Zone 2 Salesman H. Wirthwein

In Witness Whereof W. C. Bloom the Exhibitor, operating the Jackson Park Theatre, located at 6711 Stony Island Ave. in the (City and State) Chicago, Ill., has on (Date) 10-7-39 executed this application, which upon written acceptance thereof by the Distributor shall be deemed to be the license of the said Exhibitor for the exhibition of the motion picture specified in the Schedule, but only at the said Theatre in accordance with the terms and conditions hereof.

W. C. Bloom
(Exhibitor)

Accepted By ? ? ? ?
Date .....

Paramount Pictures Inc.
By Allen Asher.

Exhibitor's Copy

2958 (Page 1)

New York, Oct. 10, 1939.

Paramount Exhibition Contract.

(This is not a Standard License Agreement. It is Paramount's Individual Form)

Agreement of license under copyright made in one or more counterparts: between Paramount Pictures Inc. a New York Corporation (hereinafter referred to as the Distributor), party of the first part, and the Exhibitor (hereinafter named and referred to as the "Exhibitor," operating the theatre hereinafter designated), party of the second part, Witnesseth: The parties hereto agree as follows:

License—First: The Distributor grants the Exhibitor and the Exhibitor accepts, a limited license under respective copyrights of the motion pictures and trailers designated and described in the Schedule hereof and under the copyright of any matter included in any sound recorded therewith, to exhibit publicly said motion pictures and trailers and to reproduce for public performances such recorded sound in sychronism therewith, but only at the said theatre for the number of consecutive days specified in the Schedule and for no other use or purpose; provided that the reproducing equipment in the said theatre will operate reliably and efficiently to reproduce such recorded sound with adequate volume and high quality; and provided further that if copyrighted musical compositions are included in such recorded sound, the Exhibitor will have at the date or dates of the exhibition of such motion pictures and trailers a license from the copyright proprietor thereof or from any licensee of such copyright proprietor to perform publicly the said copyrighted musical compositions. If more than one theatre is hereinafter designated the said motion pictures and trailers are licensed for exhibition at only one of such theatres unless otherwise in the Schedule specifically provided in in writing.

Term And Warranty—Second: (a) The term of this Agreement shall begin with the date fixed or determined for the exhibition at the said theatre of the first motion picture

deliverable hereunder and shall continue for a period of one year thereafter unless otherwise in the Schedule provided. The Distributor agrees during said term to deliver to the Exhibitor, and the Exhibitor agrees to exhibit at said theatre during said term upon the date or dates herein provided for, a positive print of each of said motion pictures except such as may be excluded as provided in Clause Fourteenth hereof. The Distributor warrants that each positive print will be in good physical condition for projection and exhibition, and will clearly reproduce the recorded sound in synchronism therewith if properly used upon standard reproducing equipment. If the recorded sound is not recorded upon a print, all references herein to a print shall be deemed to include the records, discs and any other device upon which sound may be recorded for reproduction with the exhibition of a print.

Damages—Failure To Deliver—Second: (b) If the Distributor shall fail or refuse to deliver, during the term hereof, any of the motion pictures licensed hereunder, excepting those which may be eliminated as provided in Clause Fourteenth hereof, or if the Distributor shall wilfull violate any of the provisions of Clause Seventh hereof, or shall deliver to the Exhibitor a print of any motion picture, which print shall be determined was not in condition for exhibition and for the reproduction of sound as provided in Clause Second (a), the Distributor shall pay the damage so caused (which payment shall in no event exceed the liquidated damages hereinafter provided in this Subdivision (b)) and if such damage cannot be definitely computed, shall pay as liquidated damages and in no event in excess thereof, a sum equal to the license-fee specified for each such motion picture, or a sum computed as provided in Clause Third (c) hereof if the license fee for any such motion picture is to be determined in whole or in part upon a percentage of the admission receipts of said theatre or any part thereof, or upon a percentage of such receipts, and a fixed sum; provided that any claim by the Exhibitor with respect to the condition of a print shall be deemed to have been waived by the Exhibitor, unless notice of such claim shall have been given by the Exhibitor to the Distributor's Exchange from which the Exhibitor is served, by telephone or telegraph, or in person, immediately after the first public exhibition thereof by the Exhibitor and

written confirmation thereof mailed by the Exhibitor on the same day to the Distributor's said Exchange.

Payment—Third: (a) Exhibitor agrees to pay for such license as to each such motion picture and trailer the fixed sums specified in the Schedule at least three (3) days in advance of the date of delivery of the print thereof at the Distributor's exchange or of the date of shipment to the Exhibitor from another exhibitor, unless after the acceptance of this application by the Distributor such payment shall be otherwise agreed to by the Distributor in writing signed by an officer of the Distributor. All payments hereunder shall be made to the Distributor at the City in which is located the exchange from which the Exhibitor is served.

(b) Percentage Bookings—If the rental of any of such motion pictures is to be determined either in whole or in part upon the admission receipts of said theatre or any part hereof; the Exhibitor agrees to pay such rental immediately after the last exhibition upon the last date of the exhibition of each such motion picture or if requested by the Distributor at the end of each day's exhibition. In each such case the Exhibitor shall deliver to the Distirbutor immediately after the last exhibition upon each date of exhibition of each such motion picture a correct itemized statement of the gross receipts of said theatre for admission thereto upon each such date. Such statement shall be signed by the Exhibitor or the Manager or Treasurer of said theatre and the Cashier thereof and shall include a statement of such facts and figures as may be provided in the Schedule to be furnished by the Exhibitor, and if requested by the Distributor, shall be made upon forms furnished by the Distributor. Upon the exhibition date or dates of each motion picture an authorized representative of the Distributor is hereby given the right to verify the sale of all tickets of admission to said theatre, and the receipts therefrom; and for such purpose shall have access to the theatre, including the box office, and also the right to examine all relevant entries relating to such gross receipts in all the Exhibitor's books and records, and if hereunder it is provided that the Exhibitor make certain expenditures and or deductions, to examine all entries relating to such expenditures and or deductions. It is further agreed that if the Exhibitor's operting expense is an element in the

computation of the license fees payable to the Distributor hereunder, the right herein granted to the Distibutor to audit the Exhibitor's books and records shall include the right to examine all of such books and records relating to the Exhibitor's operating expenses. Such right of access and examination of the Exhibitor's books and records limited as aforesaid, shall continue for a period of one (1) year after the receipt by the Distributor of each such statement. The Distributor agrees that any information obtained pursuant to the provisions of this clause will be treated as confidential, excepting in any arbitration proceedings or litigation in respect to this license. It is agreed that the acceptance by the Distributor of any sum tendered by the Exhibitor in full payment of any license fee payable hereunder, based upon a percentage of the admission receipts of said theatre, shall not estop or prevent the Distributor from thereafter disputing the correctness of such payment. It is further agreed that any and all sums of money accruing to the Distributor hereunder as its share of the gross receipts during the exhibition of any motion picture hereunder, shal be held by the Exhibitor in trust for the Distributor until payment thereof to the Distribufor as hereinbefore provided.

(c) Liquidated Damages—Failure To Exhibit: If the Exhibitor shall fail or refuse to exhibit during the term hereof, any of said motion pictures and trailers, excepting those which may be eliminated as provided in Clause Fourteenth hereof, then and in such event, the Exhibitor shall pay as liquidated damages a sum equal to the fixed sum or sums herein specified as the rental for each such motion picture, and if the rental or any part thereof is to be computed in whole or in part upon a percentage of the admission receipts of said theatre, the Exhibitor shall pay the Distributor as liquidated damages for each day the Exhibitor fails or refuses to exhibit such motion pictures, in addition to any fixed sums payable hereunder in respect of such motion picture, a sum equal to such percentage of as provided in Clause Fourteenth hereof, then and in such event, the Exhibitor shall pay as liquidated damages a sum equal to the fixed sum or sums herein specified as the rental for each such motion picture, and if the rental or any part thereof is to be computed in whole or in part upon a percentage of the admission receipts of said theatre, the

Exhibitor shall pay the Distributor as liquidated damages for each day the Exhibitor fails or refuses to exhibit such motion pictures, in addition to any fixed sums payable hereunder in respect of such motion picture, a sum equal to such percentage of the average daily gross receipts of such theatre on each date any feature motion picture distributed by the Distributor was exhibited thereat during the period of ninety (90) days prior to the date or dates when said motion picture should have been so exhibited hereunder, or if no feature motion picture distributed by the Distributor was exhibited at such theatre during said ninety day period, then a sum equal to such percentage of the average daily gross receipts of such theatre during the period of thirty operating days immediately prior to the date or dates when such motion pictures should have been exhibited, or prior to the date of such failure or refusal to exhibit any of said motion pictures; provided that if the Exhibitor shall exhibit such motion pictures for less than the full number of days provided for in the Schedule, for each day less than said full number of days, the sum equal to such percentage shall be computed upon a sum equal to seventy-five (75%) per cent of the gross receipts of said theatre during the last day of the exhibition thereat of such motion picture. A sworn statement of the said daily gross receipts shall be delivered by the Exhibitor to the Distributor upon demand therefor.

Delivery And Return Of Prints—Fourth: (a) After each motion picture licensed hereunder is generally released for public exhibition and becomes available for exhibition hereunder by the Exhibitor, the Distributor agrees to deliver as hereinafter provided, a print thereof to the Exhibitor.

(b) The public exhibition of any of said motion pictures for three (3) consecutive days at prices usually charged for admission to the theatre where so exhibited in the territory wherein is located the exchange from which the exhibitor is served, excepting any "road show", "try-out", "preview", or "pre-release" exhibitions thereof, shall be deemed the general release for public exhibition of such motion picture but only in such territory. A "pre-release" exhibition shall be deemed any exhibition because of seasonal conditions making desirable exhibitions in advance of general release as herein defined.

(c) The Exhibitor agrees to exhibit said motion pictures in the order of their availability hereunder and in accordance with the exhibition arrangement, if any, set forth in the Schedule hereof, and the Distributor shall be under no obligation to deliver a print of any of said motion pictures out of the order of availability hereunder.

(d) The Distributor shall make deliveries hereunder to the Exhibitor or to the Exhibitor's authorized agent, by delivery at the Distributor's exchange, or to a common carrier, or to the United States Postal authorities. If deliveries are made to a carrier or to a post office, they shall be made in time for prints to reach the place where the said theatre is located in time for inspection and a projection thereof before the usual time for opening said theatre.

(e) Exhibitor agrees to return immediately after the last exhibition on the last date of exhibition licensed, each print received hereunder, with its reels and containers, to the exchange of the Distributor from which the Exhibitor is served or as otherwise directed by the Distributor in the same condition as when received, reasonable wear and tear due to proper use excepted. Exhibitor agrees to pay all costs of transportation of such prints, reels, and containers from the Distributor's exchange or the last previous exhibitor having possession of the same, and return to the Distributor's exchange; or if directed by the Distributor, to ship such positive prints elsewhere than to the Distributor's exchange, transportation charges collect. It is agreed that the delivery of a positive print properly directed and packed in the container furnished by the Distributor therefor, to a carrier designated by the Distributor and proper receipt therefor obtained by the Exhibitor, shall constitute the return of such positive print by the Exhibitor.

(f) If Exhibitor fails to or delays the return of any positive print to the Distributor or fails to forward or delays forwarding (as directed by the Distributor) any such print to any other exhibitor, the Exhibitor agrees to pay the Distributor the damage, if any, so caused the Distributor and in addition the damage, if any, so caused such other exhibitor. The Exhibitor shall have the right to participate in any compromise of or intervene in any arbitration or legal proceedings based upon any claim for such damage asserted against the Dis-

tributor by another exhibitor; notice of which, shall be given the Exhibitor by the Distributor.

Loss And Damage To Prints—Fifth: The Exhibitor shall pay to the Distributor a sum equal to the cost of replacement at the Distributor's exchange for each lineal foot of any print, lost, stolen or destroyed or injured in any way in the interval between the delivery to and the return thereof by the Exhibitor in full settlement of all claims for such loss, theft, destruction or injury. Such payment, however, shall not transfer title to or any interest in any such positive print to the Exhibitor or any other party, nor release the Exhibitor from any liability arising out of any breach of this agreement. The Distributor shall at the option of the Exhibitor repay or credit to the Exhibitor any sums paid by the Exhibitor for any lost or stolen print, excepting "news reels", upon the return of such lost or stolen print to the Distributor within sixty (60) days after the date when the same should have been returned hereunder. The Exhibitor shall not be liable for the damage or destruction of any print, provided the Exhibitor establishes such damage or destruction occurred while in transit from the Exhibitor and delivery thereof was made as hereinabove provided. The Exhibitor shall immediately notify the Distributor's exchange by telegram of the loss, theft or destruction of or damage or injury to any print. If any print shall be received from the Exhibitor by the Distributor or any subsequent exhibitor in a damaged or partially destroyed condition it shall be deemed to have been so damaged or destroyed by the Exhibitor unless the latter, immediately after the first public exhibition thereof shall have telegraphed the Distributor's exchange that such print was received by the Exhibitor in a damaged or partially destroyed condition, and setting forth fully the nature of such damage and the amount of footage so damaged or destroyed.

Selection Of Play Dates—Sixth: Unless otherwise agreed upon or unless definitely specified or otherwise provided for in the Schedule, the exhibition date or dates of each of said motion pictures shal be determined as follows:

1. Subject to prior runs and or clearance granted or hereafter granted by the Distributor to other exhibitors and within a reasonable time after a print or prints of each

of said motion pictures is received at the exchange of the Distributor out of which the Exhibitor is served, and provided the Exhibitor is not in default hereunder, the Distributor shall mail to the Exhibitor a notice in writing of the date when each such motion picture will be available for exhibition by the Exhibitor (which date is hereinafter referred to as the "available date"). Such notice shall be mailed to the Exhibitor at least fifteen (15) days before the available date therein specified.

2. Within fourteen (14) days after the mailing of such notice, the Exhibitor shall select an exhibition date or dates not theretofore assigned to another exhibitor or other exhibitors, within the period commencing upon the available date and ending thirty (30) days thereafter and give to the Distributor written notice of the date or dates so selected.

3. Upon the failure of the Exhibitor to so select such date or dates the Distributor may designate such date or dates by mailing wirtten notice thereof to the Exhibitor.

Clearance And Run—Seventh: The Distributor agrees not to exhibit or grant a license to exhibit any of said motion pictures for exhibition in conflict with the "run" or prior to the expiration of the "clearance period", if any in the Schedule specified at any theatre therein named or within the territorial limits therein specified. Such period of clearance as to each of said motion pictures shall be computed from the last date of the exhibition thereof licensed hereunder. If clearance is granted against a named theatre or theatres indicating that it is the intention of the Distributor to grant such clearance against all theatres in the immediate vicinity of the Exhibitor's theatre then unless otherwise provided in the Schedule, such clearance shall include any theatre in such vicinity thereafter erected or opened.

Advertising Prior to Run—Eighth: (a) If the Exhibitor is granted a subsequent run of the said motion pictures, the Exhibitor shall not advertise any thereof by any means of advertising prior to or during the exhibition of any one of said motion pictures by an other Exhibitor having the right to a prior run thereof. Nothing in this Clause shall be deemed to prohibit the Exhibitor from advertising generally all of said motion pictures as a group but such general advertising shall not refer to any one of said motion pictures during its exhibition by any other exhibitor hav-

ing the first or immediately prior run thereof, excepting as herein provided.

(b) The Exhibitor shall not advertise by any means of advertising any of said motion pictures which may be road-shown by the Distributor until after the completion of such roadshowing in the United States, and then only as permitted in paragraph (a) of this Clause.

(c) For a breach of the provisions of this Clause the Distributor shall have in addition to all other rights the right to exclude from this license any motion picture advertised in violation of the provisions hereof by written notice to such effect mailed to the Exhibitor and upon the mailing of such notice the license of such motion picture shall terminate and revert to the Distributor.

Acceptance By Distributor—Ninth: Until accepted in writing by an officer of or any person authorized by the Distributor and notice of acceptance sent to the Exhibitor this instrument shall be deemed only an application for a license under Copyright, and may be withdrawn by the Exhibitor any time before such acceptance. Unless such notice of acceptance is sent the Exhibitor by mail or telegraph within fifteen (15) days after the date thereof, if the said theatre of the Exhibitor is located East of the Mississippi River, and within thirty (30) days after the date thereof if located West of said river, said application shall be deemed to have been withdrawn. The deposit by the Distributor of any check or other consideration given by the Exhibitor at the time of application as payment for any purpose or the delivery of a print of any of said motion pictures shall not be deemed an acceptance hereof by the Distributor.

Changes In Writing—Tenth: This license agreement is complete and all promises, representations, understandings and agreements in reference thereto have been expressed herein. No change or modification hereof shall be binding upon the Distributor unless in writing signed by an officer of the Distributor, excepting in an emergency and only then, a change or modification may be consented to in writing but only by the representative of the Distributor managing the Distributor's exchange out of which the Exhibitor as served provided such change or modification does not change or modify the run, and/or clearance period, or decrease any rental, or eliminate any motion picture specified in the Schedule.

Assignment On Sale Of Theatre—Eleventh: This license shall not be assigned by either party without the written consent of the other, provided, that if the Exhibitor sells the said theatre or transfers any interest therein and is not in default hereunder, the Exhibitor may assign this license to the purchaser of the theatre or of such interest without the written consent of the Distributor, but any such assignment shall not be valid or of any effect hereunder unless a written acceptance thereof by the assignee assuming the obligations of the Exhibitor shall be delivered to the Distributor. Any such assignment shall not release the Exhibitor from any liability hereunder unless such release from liability is consented to by the Distributor in writing. It is agreed however, that the Distributor, without consent of the Exhibitor, may assign this license to any subsidiary or affiliate of Paramount Pictures Inc. now or hereafter formed, which shall distribute the motion pictures licensed hereunder in the territory served by the Distributor's Exchange serving the Exhibitor's theatre hereunder.

Taxes—Twelfth: The Exhibitor shall pay to the Distributor upon demand any tax, fee or other like charge now and or hereafter imposed or based upon the delivery, possession and or the exhibition of prints of motion pictures and trailers and or upon the sums payable under this license by the Exhibitor to the Distributor. If under any statute or ordinance any such tax, fee or other like charge is or shall be payable or paid by the Distributor and the exact amount payable hereunder by the Exhibitor is not therein definitely fixed or cannot be exactly determined, then the Exhibitor shall pay such part of any such tax, fee or other like charge paid or payable by the Distributor as shall be fixed in the manner determined by the then President of the American Arbitration Association.

Prevention of Performance—Thirteenth: If the Exhibitor shall be prevented from exhibiting any of said motion pictures hereunder because of strikes, fires, insurrection, Acts of God, the public enemy, public calamity, or order of any court of competent jurisdiction, not due to the Exhibitor's fault, or for any similar cause beyond the control of the Exhibitor, then such failure of performance in respect to each such motion picture or trailer available for exhibition hereunder during the period of such disability

shall be excused and each such photoplay shall thereupon be excepted and excluded from this license and agreement.

If the Distributor shal be delayed or prevented from performance of this agreement because of strikes, fires, insurrection, Acts of God, the public enemy, public calamity, court orders, censor rulings, delays of any common carrier or of the U. S. Postal authorities, delays in production, or any other reason beyond the control of the Distributor, then such delay or prevention of performance shall be excused and all claims or causes of action for damages therefor or arising therefrom are hereby expressly waived by the Exhibitor.

Option To Exclude—Fourteenth: (a) If in this license agreement the total number of feature motion pictures offered to the Exhibitor by the Distributor, at one time, shall have been licensed by the Distributor hereunder, the Exhibitor shall have the privilege to exclude from this license agreement not to exceed ten (10%) per cent of the total number of feature motion pictures licensed hereunder, provided that the Exhibitor is not in default hereunder.

(b) The Exhibitor may exercise such privilege of exclusion by giving to the Distributor written notice of the Exhibitor's election to exclude any of said feature motion pictures, within ten (10) days after the Distributor shall mail to the Exhibitor a notice of availability thereof.

(c) In computing the number of feature motion pictures which may be excluded hereunder, fractions of more than one-half (½) shall be regarded as one (1).

(d) Upon the exclusion of each feature motion picture, the license therefor and all rights hereunder shall terminate and shall revert to the Distributor.

(e) Upon the failure or refusal of the Exhibitor to comply with any term or condition of this license agreement, the privilege of exclusion forthwith shall be revoked.

Remedies—Fifteenth: If the Exhibitor shall fail or refuse to select the exhibition date or dates of any motion picture ar provided in Clause Sixth hereof, or if the Exhibitor shall fail or refuse to exhibit any such motion picture on the date or dates designated by the Distributor if designated as provided in paragraph 3 of said Clause, or if the Exhibitor shall fail or refuse to pay the rental of any of such motion pictures as provided in this license or to furnish statements of the receipts of said theatre, if any

are required hereunder, or to give the Distributor's representative access to the said theatre or its box office and or the Exhibitor's books and records relative to motion pictures the rentals of which are based upon the said theatre's admission receipts as herein provided, or if the Exhibitor shall exhibit or permit the exhibition of any of said motion pictures at any time or place other than as herein specified, or if the Exhibitor becomes insolvent or is adjudicated a bankrupt, or executes an assignment for the benefit of his creditors, or if a receiver is appointed for any of the property of the Exhibitor, or if the Exhibitor voluntarily or by operation of law should lose control of the said theatre or of his said interest therein making it impossible for the Exhibitor to exhibit the said motion pictures at the said theatre, or if the Exhibitor shall otherwise fail or refuse to perform any of the terms and conditions on the part of the Exhibitor to be performed hereunder or if the Exhibitor shall fail or refuse to perform any other license agreement with the Distributor, then upon the happening of any one or more of said events, the Distributor may at its option, (1) suspend the delivery of additional motion pictures hereunder until such default or defaults should cease and be remedied, or (2) declare this license agreement breached by the Exhibitor entitling the Distributor to recover from the Exhibitor as liquidated damages for such breach the license fees payable in respect of all motion pictures not theretofore exhibited under this agreement, and the Distributor shall be under no obligation thereafter to deliver or offer to deliver any motion picture or pictures hereunder. It is agreed that the exercise of any of said remedies by the Distributor shall be in addition to and without prejudices to any right or remedy of the Distributor against the Exhibitor at law or in equity and or otherwise provided for in this license agreement.

Road Shows—Sixteenth: The Distributor shall have the right to exhibit and or cause to be exhibited as a "road show" at any time prior to the exhibition thereof hereunder, such of the motion pictures licensed hereunder as the Distributor may from time to time select and determine provided, however, that such motion pictures shall be so exhibited only at theatres to which an admission price for evening performances, during such exhibition thereof, of not less than $1.00 shall be charged for the majority of

orchestra seats thereof. As respects any photoplay so exhibited as a "road show" the license herein granted and the "run and/or clearance", if any, specified herein shall be subject and subordinate in all respects to all such "road show" exhibitions, and each such motion picture so "road shown" shall not be deemed available for exhibition hereunder until after the completion of all "road show" exhibitions in the United States and only if generally released during the period beginning September 1st, 1939 and ending August 31st, 1940.

Cutting Or Alteration Of Prints—Seventeenth: The Exhibitor shall exhibit each print in its entirety and shall not copy, duplicate, subrent or part with possession of any print. The Exhibitor shall not cut or alter any print, excepting to make necessary repairs thereto, or when required by any duly constituted public official or authority or with the written or telegraphic consent of the Distributor. The Exhibitor, however, may cut the print of a news reel, and in such case shall completely restore all parts cut therefrom, prior to the return thereof to the Distributor or shipment elsewhere if so directed by the Distributor, in the same condition as received by the Exhibitor.

Reissues—Foreigns—Eighteenth: (a) It is agreed that there is excepted and excluded from this license all motion pictures which are foreign produced by a foreign producer, except such foreign produced motion pictures which are produced by any subsidiary or affiliate of Paramount Pictures Inc. and/or the production of which is financed by Paramount Pictures Inc. or any subsidiary or affiliate thereto.

(b) It is further agreed that there is excepted and excluded from this license all reissues of old negatives or old negatives retitled.

Advertising Accessories—Nineteenth: The Exhibitor agrees to lease from the Distributor or the Distributor's authorized agent for use only in connection with the exhibition of each of the motion pictures exhibited hereunder and agrees not to sublease or sell the following advertising accessories: (All advertising accessories used by the Exhibitor in connection with the exhibition hereunder of each of the motion pictures licensed hereunder.)

(Continued on reverse side)

2959 The following is Film License Agreement between Loew's, Inc. and Jackson Park Theatre dated April 29, 1938, from Pl. Ex. 17:

Filed Oct. 11, 1944. Roy H. Johnson, Clerk.

2960 PLAINTIFF'S EXHIBIT 17.

Form 965—12M—4-38 Page 1

Metro-Goldwyn-Mayer Pictures
Distributed by Loew's Incorporated

Exhibition Contract 1938-39 Productions

Notice to Exhibitor: This is not a Standard form of Contract. It has been formulated individually by Distributor.

Agreement, made in one or more counterparts between Loew's Incorporated, a corporation, (hereinafter referred to as "the Distributor"), party of the first part, and the exhibitor, hereinafter named and referred to as the "Exhibitor", operating the theatre or theatres hereinafter designated, party of the second part.

Witnesseth: The parties hereto agree as follows:

First: The Distributor hereby grants to the Exhibitor, and the latter accepts, a license subject to the terms and condition hereinafter stated and those printed upon the reverse side hereof which are made a part of this contract, to exhibit publicly in synchronism with recorded sound (during the period of one year commencing with the date fixed or determined as hereinafter provided for the exhibition in the theatre, hereinafter designated of the first feature motion picture (other than feature Reissues) deliverable hereunder, unless otherwise in the Schedule provided), at said theatre only, each of the Feature and Junior Feature motion pictures designated or provided for in the Schedule, for the number of successive days in the said Schedule provided for Feature and Junior Feature motion pictures, respectively; and also a license subject to said terms and conditions to exhibit at said theatre only the M-G-M Trailers of such feature motion pictures. This license is under the respective copyrights of said motion

pictures and under any copyright which may be in force with respect to any matter included in such recorded sound.

If more than one theatre is hereinafter designated no motion picture or Trailer is licensed hereunder for exhibition at more than one of such theatres unless otherwise specifically agreed upon in the Schedule.

Second (a) It is agreed that the feature motion pictures which are to be exhibited by Exhibitor under each of the classifications provided for in the Schedule shall be designated by the Distributor, and that any motion picture which Distributor does not designate to any of such classifications at least fourteen (14) days prior to the date agreed upon or assigned for the commencement of the exhibition shall be exhibited on the terms provided for in the last of such classifications.

(b) It is further agreed that in case any motion picture excluded by Exhibitor under the "Option to Exclude" or "Roadshows" Clause of this agreement shall be or shall have been designated by Distributor to any of such classifications, than such designation shall be deemed automatically rescinded and Distributor may designate a different motion picture in its place for exhibition upon the terms applicable to the motion picture so excluded.

(c) It is further agreed that in the event any playdates confirmed to Exhibitor for any motion picture designated by Distributor to any of such classifications shall be on days of the week other than those provided in the Schedule for pictures of the respective classification, such playdates shall be deemed cancelled and Exhibitor agrees to select other playdates on days of the week herein provided for pictures of the classification to which such picture is designated by the Distributor.

Third: Unless otherwise expressly provided in the Schedule hereof, the license hereby granted shall not be deemed to include the right to exhibit any of the Feature or Junior Feature motion pictures in whole or in part at any so-called midnight performance, viz., at any time between 12:01 A. M. and 6 A. M.

Fourth: It is agreed that if the run herein granted is other than a first run, Distributor always retains the right, without violating any right of Exhibitor hereunder, to exhibit or license for exhibition any or all of said motion pictures as a "continued first run" (i.e., for a run imme-

diately following the conclusion of the initial first run and prior to any run except first run, with admission prices not less than those of the initial first run), and in such case Exhibitor's availability as to any motion pictures so exhibited is postponed accordingly, and any clearance herein provided over the theatre wherein such "continued first run" occurs is then automatically modified to authorize such "continued first run" in such theatre.

Fifth: In case Exhibitor is granted a second and or subsequent run hereunder Distributor may at its option require any of the motion pictures to be exhibited by Exhibitor as a prior run, and Exhibitor agrees so to exhibit same.

Sixth: It is agreed that if for any reason less than the full number of Junior Feature motion pictures of any brand hereby contracted for are generally released within the period September 1, 1938, to August 31, 1939, this contract shall be deemed to be only for the actual number of pictures of the respective brands released during said period.

Seventh: The following Schedule and all of the written and printed parts thereof are a part of this license.

Schedule

There are licensed for exhibition hereunder all of the motion pictures of feature length, not to exceed fifty-two (52) and not less than forty-four (44), each of whose date of general release by the Distributor for distribution as Distributor's 1938-1939 feature productions in the United States shall occur during the year commencing September 1, 1938, and ending August 31, 1939, except the motion pictures as to which Distributor is required by contract to obtain the consent or approval of the producer thereof, or other party, to the terms and conditions of licensing the exhibition thereof, unless Distributor obtains such consent or approval to the licensing thereof hereunder. The "road-showing," "tryout," "preview" and or "pre-release" of any motion picture during the said year shall not be deemed a general release thereof.

Classifications

Number of feature motion pictures	Consecutive days run	License Fee or Minimum guarantee against % of receipts per motion picture: Rental or Minimum Guarantee	% of all gross receipts	To be exhibited on below specified days of week
Four	Three		35%	Thur-Fris-Sat
Sixteen	2-3	$125.00		
Sixteen	2-3	95.00		
Ten	2-3	68.75		
Balance	2-3	55.00		

As to each motion picture licensed hereunder on a participating basis Exhibitor agrees to pay, in addition to the foregoing, a score charge license fee of Ten and no 100 dollars ($10.00).

Total number of feature motion pictures offered, all.

Total number of feature motion pictures licensed, all.

Exhibitor during the whole of the licensed exhibition period of each of said feature motion pictures agrees to and shall charge for admission to said theatre the following prices:

Matinee admission prices, per person: Orchestra, Children 10¢, adults 15¢; balcony, Children 10¢ Sun.-Hol., adults 25¢.

Evening admission prices (commencing 6:30 P. M.), per person: orchestra, Children 10¢, Adults 25¢; balcony, children 10¢, adults 25¢.

Run, "1st" Week Chicago release. Clearance, Hamilton not to play ahead of second week Lexington not to play ahead of first week.

Playing Arrangement(s), features: Exhibitor agrees to play and or pay for feature(s) per in order of release if and as available, starting

License fee per Trailer: Three dollars ($3.00). Each Trailer to be shipped to Exhibitor seven days in advance of the first playdate of the motion picture to which it relates; and to be returned by Exhibitor to Distributor's Exchange or as otherwise directed by Distributor not later than such first playdate. Trailers to used for the 36 highest allocated pictures.

JUNIOR FEATURES

Title or Brand	Number in Series	Release Numbers	Release Numbers of Pictures Contracted For	Consecutive Day Run (Each)	Number of Pictures Contracted For	License Fee Total	License Fee Per Subject
TWO REELERS							
M-G-M Musicals	6	R801 to R806	R801 to R806	2-3	6	90.00	15.00
Crime Doesn't Pay	6	P811 to P816	P811 to P816	2-3	6	90.00	15.00
ONE REELERS							
Fitzpatrick Traveltalks	12	T851 to T862	T851 to T862	2-3	12	90.00	7.50
M-G-M Miniatures	10	M871 to M880	M871 to M880	2-3	10	75.00	7.50
M-G-M Cartoons	15	W881 to W895	W881 to W895	2-3	15	150.00	10.00
Pete Smith Specialties	13	S901 to S913	S901 to S913	2-3	13	97.50	7.50
Passing Parade	10	K921 to K930	K921 to K930	2-3	10	75.00	7.50
Hal Roach Our Gang Comedies	12	C931 to C942	C931 to C942	2-3	12	120.00	10.00
Robert Benchley	8	F951 to F958	F951 to F958	2-3	8	60.00	7.50

Plaintiff's Exhibit No. 17.

1335

No run, nor any clearance, is granted to Exhibitor with respect to any of said Junior Features, unless specifically provided for in this Schedule of Junior Features.

Playing arrangement(s), junior features: Frist week Chicago release. Exhibitor may eliminate 50% of the short subjects becoming available, each month, while he is playing a D/F policy on each change.

Exhibitor agrees to play the Junior Features licensed hereunder as available, commencing _____ and to pay the total license fee of $_____ in _____ consecutive weekly installments of $_____, each week starting _____, and a further payment of $_____ for the last week. It is further agreed that in the event Exhibitor fails to play in accordance herewith no credit is to be allowed Exhibitor because prints are not available or are in poor condition.

There are also licensed for exhibition hereunder the following Feature Reissues, the first two of which are to be released prior to September 1, 1938, and the remainder between September 1, 1938, and August 31, 1939.

REISSUES

Production Numbers	Title	Consecutive days run	License Fee or Minimum guarantee against % of gross receipts per motion picture: Rental or Minimum Guarantee	% of all gross receipts	Run, Clearance, Playing Arrangement
403	Treasure Island	2-3	55.00		First
533	David Copperfield	2-3	55.00		Week Chicago rel
536	Mutiny on the Bounty	2-3	68.75		First
636	San Francisco	2-3	68.75		Week
201	The Champ	2-3	68.75		Chicago
643	Rose Marie	2-3	68.75		release

As to each feature reissue licensed hereunder on a participating basis Exhibitor agrees to pay, in addition to the foregoing, a score charge license fee of
dollars ($). (End of schedule).

Optional Arbitration Clause: Article Twentieth hereof is optional with the parties hereto. If it is desired to make such Article a part of this license, the Exhibitor and the duly authorized representative of the Distributor shall sign their respective names where indicated immediately following this paragraph and unless so signed the said Article shall be deemed excluded from this license agreement.

It is agreed by and between the parties that Article Twentieth hereof shall be included as a part of this license.

Illegible
Representative of the Distributor duly authorized to agree to Article Twentieth.

Exhibitor Jackson Park Theatre D/B/A.
An Individual
(Strike out two)

By P. B. Ball,
General Manager.
(Strike out two)

In Witness Whereof W. C. Bloom the Exhibitor, operating the Jackson Park Theatre, located at 67th & Stony Island Ave. Street in the Chicago, Illinois has on 4-18-38
(City & State) (Date)
executed this application, which upon written acceptance thereof by the Distributor shall be deemed to be the license of the said Exhibitor for the exhibition of the motion pictures specified in the Schedule, but only at the said Theatre in accordance with the terms and conditions hereof.

Accepted, Approved and Countersigned at New York N. Y.

Date April 29, 1938.

Loew's Incorporated (L.S.)
By illegible
Vice-President or Sales Manager.

White—Home Office: Pink—
Exhibitor: Yellow—Branch:
Green—Exhibitor's Application.
Printed in U. S. A.

Loew's Incorported
(Distributor of Metro-Goldwyn-Mayer Pictures)
By illegible

(This signature is for identification only and is not an acceptance)

Exhibitor Jackson Park Theatre, L.S.
An Individual
(Strike out two)
By P. B. Ball,
General Manager.
(Strike out two)
Lessee (Strike out one)

Chicago Branch	Shumow Territory Letter	Unit Number	Exhibitor's Record Card	Contract Register
16-F-S-T Contract Number	Features		Jr. Features Amount	Trailers

2961 Time and Place of Exhibition

Eighth: The Exhibitor agrees to exhibit under said license said motion pictures with recorded sound, but only at the place herein specified, on the exhibition date or dates fixed in the Schedule or determined as hereinafter provided, and not allow any positive print thereof to leave Exhibitor's possession during the period specified for the exhibition thereof by Exhibitor, nor to exhibit or to permit the exhibition of any such positive print at any other time or place. Such license shall be specifically for such exhibition of such motion pictures, and for no other use or purpose.

License Fees; Payments

Ninth: For the license herein granted Exhibitor agrees to pay to Distributor the license fees provided for in the Schedule for feature motion pictures, junior feature motion pictures, and Trailers, respectively. Exhibitor agrees to pay any fixed sums herein provided, for at least three (3) days in advance of the date of shipment from the Distributor's Exchange or from the last previous exhibitor of the positive prints of the respective motion pictures and Trailers.

Exhibitor hereby expressly grants Distributor the right to demand and receive, as a condition precedent to delivery of the print and/or sound records of any motion picture contracted for hereunder, payment of all amounts then due Distributor by Exhibitor under this or any other exhibition contract(s) between the parties hereto and Distributor may require such payment of all sums then due by means of a C.O.D. shipment or otherwise.

It is agreed that all payments to Distributor hereunder shall be made at the Exchange of Distributor out of which Exhibitor is served.

Warranties, etc., as to Recorded Sound

Tenth: (a) "Recorded Sound", as used in this agreement, is deemed to mean the spoken words, music or other sounds recorded upon a positive print of a motion picture or upon a record, disc or other similar devices separate and apart from a positive print, for use in synchronism therewith.

(b) Exhibitor warrants and agrees, First, that the sound reproducing equipment installed in said theatre will operate reliably and efficiently to reproduce such recorded sound with adequate volume and high quality, whether recorded upon the positive print or upon records, discs, or other similar devices; and Second, that if copyrighted musical compositions are included in such recorded sound, Exhibitor shall at the time of the exhibition of each of such motion pictures and the reproduction of such recorded sound, have an effective license from the copyright proprietor thereof or from any licensee of such copyright proprietor publicly to perform the said musical compositions.

(c) Exhibitor agrees to run all of said motion pictures on the same size reels as furnished by Distributor.

Clearance and Run.

Eleventh: During the life of this contract Distributor agrees not to exhibit or license the exhibition of any such motion pictures in conflict with the "run" or prior to the expiration of the clearance period, if any, in the Schedule specified, but it is agreed that any violation hereof by Distributor shall not affect this contract except as to the particular motion picture as to which such violation has occurred, and that the damage that may be claimed by Exhibitor shall not exceed the amount of the license fee herein provided for such particular motion picture, or, if such motion picture has been contracted for on the basis of a guarantee against a percentage, shall not exceed the amount of such guarantee, or if upon a straight percentage basis, shall not exceed the average amount paid by Exhibitor to Distributor for the motion pictures of Distributor theretofore exhibited by Exhibitor hereunder; and further agreed that such claim for damage shall be the sole and exclusive remedy of Exhibitor on account of such violation. Unless otherwise provided herein, such clearance period shall be computed from the last date of exhibition of each motion picture as fixed herein. If clearance is granted hereunder against a specified theatre or theatres indicating that it was the intention of Distributor to grant such clearance against all theatres in the immediate neighborhood or vicinity of Exhibitor's theatre, then, unless otherwise provided in the Schedule, such clearance shall be deemed to apply to and include any theatre hereafter opened in such neighborhood or vicinity.

Definition of Gross Receipts

Twelfth: It is agreed that "gross receipts", as such term is used in this agreement, means all sums (exclusive of admission taxes collected) received by Exhibitor for admission to said theatre on the date(s) of exhibition of the respective motion pictures.

Playdate—Special Provisions

Thirteenth: It is agreed that if the number of days of exhibition selected, designated or otherwise agreed upon and confirmed in writing by Distributor for any motion picture licensed hereunder shall be less than the maximum number of days specified in the Schedule hereof with respect to such motion picture; then regardless of the number of days specified in said Schedule the license hereby granted to Exhibifor as to such motion picture shall be limited to the number of days of exhibition so selected and confirmed, unless Exhibitor prior to the last playdate so confirmed by Distributor shall secure Distributor's consent in writing to exhibit such motion picture an additional day or days up to the maximum number of days specified in said Schedule. It is further understood and agreed that the license hereby granted shall not be deemed to include (a) any right of exhibition of any motion picture licensed hereunder at any time other than on the date or dates of exhibition selected, designated or otherwise agreed upon, as herein provided, and confirmed in writing by Distributor to Exhibitor for such picture; nor (b) any right of exhibition of any motion picture licensed hereunder other than by means of the print of the picture furnished to Exhibitor by Distributor for the express purpose of exhibition on the date or dates of Exhibition so selected, designated or otherwise agreed upon, as herein provided, and confirmed in writing by Distributor to Exhibitor for such picture.

Admission Prices

Fourteenth: It is agreed that a main consideration for the grant of this license is that Exhibitor warrants and agrees that during the entire engagement of each of the feature motion pictures hereby licensed not less than the respective prices set forth in the Schedule shall be charged

for admission to said theatre; and it is agreed that if without prior written consent of Distributor any of such respective admission prices are reduced during the engagement of any of the motion pictures Distributor shall have the right forthwith either (1) to change or modify the run, availability and or clearance herein provided for, or (2) to terminate the license herein granted as to all feature motion pictures not theretofore exhibited hereunder, or (3) to terminate this contract in its entirety, together with the right, at Distributor's option, to terminate any other exhibition contract(s) between the parties hereto.

It is further agreed that if any of the feature motion pictures licensed hereunder are licensed upon a "participating basis"—that is, if the rental thereof is to be determined in whole or in part upon a percentage of the receipts of said theatre or any part thereof—that Exhibitor shall account to Distributor upon the basis of the respective admission prices set forth in the Schedule for each person admitted to the theatre, except for a customary and reasonable number of free admissions to bona fide representatives of the press and/or in consideration of theatre advertising, at each performance of each of said motion pictures, (provided that if at any such performance any of the prices of admission are greater than the respective amounts set forth in the Schedule Exhibitor shall account to Distributor on the basis of such larger amounts); and further agreed that if during the engagement of any of the feature motion pictures licensed hereunder any of the respective admission prices set forth in the Schedule are reduced without prior written consent of Distributor, or upon failure or refusal of Exhibitor to account to Distributor upon the basis herein provided with respect to any one or more of the feature motion pictures licensed hereunder on a "participating basis", Distributor shall have the right to terminate this contract as to all feature motion pictures not theretofore exhibited hereunder, together with the right at Distributor's option to terminate any other exhibition contract(s) between the parties hereto and Distributor may thereupon declare such violation hereof by Exhibitor a breach of this entire contract and/or any or all such other contracts entitling Distributor to recover from Exhibitor as damages therefor the amount payable as license fees in respect of all motion pictures not theretofore exhibited and/or paid for pursuant to the provisions of this contract and/or such

other contract(s). It is understood and agreed that such rights shall be in addition to any and all other rights and remedies granted Distributor in this agreement and without prejudice to any and all other rights and remedies at law or equity.

Delivery and Return of Prints

Fifteenth: Distributor agrees to deliver to Exhibitor during the period provided for in Article First hereof a positive print with recorded sound suitable for exhibition or each of such motion pictures for exhibition at the said theatre on the date(s) specified or determined as herein provided. Delivery of such positive prints by Distributor to Exhibitor or to Exhibitor's authorized agent at Distributor's exchange or to a common carrier or to the United States postal authorities for mailing shall be deemed delivery by Distributor to Exhibitor hereunder. The agency used in the transportation of all positive prints shall at all times during the term of this agreement be acceptable to the Distributor.

All deliveries other than at Distributor's exchange shall be made in time to enable the carrier thereof in accordance with the carrier's time schedule to deliver to Exhibitor or at the place where Exhibitor's theatre is located prints at least one hour before the usual time for the opening of Exhibitor's Theatre.

Exhibitor agrees to return each positive print received by Exhibitor hereunder with the reels and containers furnished therewith, to the exchange of Distributor from which Exhibitor is served or as otherwise directed by Distributor immediately after the last exhibition of such print, in the same condition as when received, reasonable wear and tear due to the proper use thereof excepted. Exhibitor agrees to pay all costs of transportation of such positive prints from Distributor's exchange or the last previous exhibitor having possession of any of such positive prints (as the case may be) and return to Distributor's exchange; or if directed by Distributor, to ship such prints elsewhere than to Distributor's exchange transportation charges collect. It is agreed that the delivery of a positive print properly directed and packed in the container furnished by Distributor therefor, to a carrier designated or used by Distributor

and proper receipt therefor obtained by Exhibitor, shall constitute the return of such positive print by Exhibitor.

If Exhibitor fails to or delays the return of any positive print to Distributor or fails to forward or delays forwarding (as directed by Distributor) any such print to any other exhibitor the Exhibitor agrees to pay Distributor the damage, if any, so caused Distributor and in addition the damage, if any, so caused such other exhibitor.

Distributor is hereby given the option of delivering prints directly from Distributor's exchange or routed to Exhibitor through another exhibitor. In case of any delay in or non-delivery of any prints so "routed" for any cause beyond Distributor's control, Exhibitor hereby releases Distributor of all claims for damages or otherwise.

Selection of Playdates

Sixteenth: Unless otherwise agreed upon or unless definitely specified or otherwise provided for in the Schedule, the exhibition date or dates of each of said motion pictures shall be determined as follows:

1. Subject to prior runs and or clearance granted or hereafter granted by Distributor to other exhibitors and within a reasonable time after a print or prints of any of said motion pictures are received at the exchange of Distributor out of which Exhibitor is served, and provided Exhibitor is not in default hereunder, Distributor shall mail to Exhibitor a notice in writing of the date when each such motion picture will be available for exhibition by Exhibitor (which date is hereinafter referred to as "the "available date"). Such notice shall be mailed to Exhibitor at least fifteen (15) days before the available date therein specified.

2. Within fourteen (14) days after the mailing of such notice, Exhibitor shall select an exhibition date or dates not theretofore assigned to another exhibitor or other exhibitors, within the period commencing upon the available date and ending thirty (30) days thereafter and give to Distributor written notice of the date or dates so selected.

3. Upon the failure of Exhibitor to so select such date or dates Distributor shall designate such date or dates by mailing written notice thereof to Exhibitor.

Loss of and Damage to Prints

Seventeenth: Exhibitor shall pay to Distributor a sum equal to the cost of replacement at Distributor's exchange for each linear foot of any positive print lost, stolen or destroyed or injured in any way in the interval between the delivery thereof by Distributor and the return thereof by Exhibitor in full settlement of all claims for such loss, theft, destruction or injury. Such payment, however, shall not transfer title to or any interest in any such positive print to Exhibitor or any other party, nor release Exhibitor from liability arising out of any breach of this contract. Distributor shall at the option of Exhibitor repay or credit to Exhibitor any sums paid by the latter for lost or stolen prints, excepting "news reels," upon their return to Distributor within thirty (30) days after the date when the same should have been returned hereunder. Exhibitor shall not be liable for the damage or destruction of any positive print, provided Exhibitor establishes such damage or destruction occurred while in transit from Exhibitor and delivery thereof was made as hereinabove provided. Exhibitor shall immediately notify Distributor's exchange by telegram of the loss, theft or destruction of or damage or injury to any positive print. If any positive print shall be received from Exhibitor by Distributor or any subsequent exhibitor in a damaged or partially destroyed condition it shall be deemed to have been so damaged or destroyed by Exhibitor unless the latter, immediately after the first public exhibition thereof shall have telegraphed Distributor's exchange that such print was received by Exhibitor in a damaged or partially destroyed condition, and setting forth fully the nature of such damage and the amount of footage so damaged or destroyed.

Reissues: Advertising Matter

Eighteenth: Distributor warrants that none of the motion pictures licensed hereunder are reissues from old negatives or old negatives renamed, except those specifically set forth as such in the Schedule; and further that none of said motion pictures will contain any advertising matter for which compensation is received by Distributor.

Assignment

Nineteenth: This agreement shall not be assigned by either party without the written acceptance of the assignee and the written consent of the other party, except that Loew's Incorporated shall have the right without consent of the Exhibitor to assign this agreement to any corporation subsidiary to or affiliated with Loew's Incorporated, in case of which assignment the assignee shall be deemed the "Distributor" hereunder. It is agreed that if Distributor consents to an assignment by Exhibitor, such consent shall not relieve Exhibitor of liability hereunder unless Distributor consents in writing to release Exhibitor from such liability.

Arbitration

Twentieth: Exhibitor and Distributor respectively, freely and voluntarily agree that as a condition precedent to the commencement of any action or proceeding in any court by either of them, to determine, enforce or protect the legal rights of either hereunder, each shall submit all claims and controversies arising hereunder for determination by arbitration as follows (hereby expressly waiving the oath of the arbitrators):

Either the Exhibitor or Distributor shall appoint an arbitrator and give written notice of such appointment to the other party. Within five (5) days after the receipt of such notice of appointment, the other party shall appoint a second arbitrator and give written notice of such appointment to the other arbitrator and to the other party. The two arbitrators so selected shall within three (3) business days thereafter select a third arbitrator, and the three (3) arbitrators shall thereupon meet and determine the matter. The hearing of any such controversy shall be in the city wherein is situated the exchange of Distributor from which Exhibitor is served, unless the parties agree in writing that such hearing be had in some other place. The arbitrators appointed hereunder shall proceed forthwith to hear and determine the matter or matters referred to them for determination and the evidence submitted to them, and may require the parties to appear and produce such accounts, documents and witnesses as the arbitrators may require. The arbitrators shall have power to determine such dis-

pute or controversy, to make findings of fact in respect thereof, and to direct specific performance of a contract, and/or to determine that the same has been breached in whole or in part, and/or that damages on such account shall be paid. The decision or award of a majority of the three (3) arbitrators herein provided for shall be final and binding and conclusive upon the parties hereto. No person shall hear or determine any controversy in which he has an interest direct or indirect, and any person having such interest shall be disqualified to act as an arbitrator. If either party fails or refuses to name the arbitrator to be appointed by such party as herein provided, or if any arbitrator so named shall fail or refuse to act, or be unable or unqualified to serve and another arbitrator qualified and then available to act is not then appointed, another arbitrator may be appointed by the other party hereto. If the arbitrators appointed by or for the respective parties shall fail to agree upon such third arbitrator, such third arbitrator may be appointed by the then acting President of the Chamber of Commerce of the State of New York, or if there be none then by the Chief Judge of the Court of Appeals of the State of New York. The parties hereto further agree to abide by and forthwith comply with any decision and/or award of the arbitrators or a majority of them, and consent that any such decision and/or award shall be enforcible in or by any court of competent jurisdiction pursuant to the law of such jurisdiction now or hereafter in force. If either party fails or refuses to submit to arbitration any such claim or controversy, the other party may apply to a United States District Court, or to any other Court, including a court of a State in which such hearing would otherwise not be had, for an order to proceed to arbitrate, in which case such hearing shall be had in such place as the court to which such application is made may lawfully direct. If Exhibitor shall fail or refuse to submit to arbitration any such claim or controversy or to abide by and comply with the award of the arbitrators in respect thereto, within seven (7) days, Distributor may at its option suspend the deliveries of the motion pictures provided for in this and in each other existing license agreement between the parties hereto and/or terminate this and each such other license agreement; and upon such termination the aggregate of the license fees of all motion pictures specified in this and any other such license agreement then

not exhibited forthwith shall become due and payable by the Exhibitor. If Distributor shall fail or refuse to submit to arbitration any such claim or controversy or to abide by and comply with the decision or the award of the arbitrators in respect thereto within seven (7) days, Exhibitor may at the option of Exhibitor terminate this and any other existing license agreement between the parties hereto by mailing a notice to such effect to Distributor within seven (7) days after such failure or refusal. Any such termination by either party shall be without prejudice to any other right or remedy which the party so terminating may have by reason of any breach by the other party of this or any other existing license agreement between the parties. Each of the parties hereto, without notice to the other, may apply to any Court having jurisdiction to make this agreement to arbitrate a rule or order of such court.

Exhibition and Advertising

Twenty-first: Exhibitor agrees to run motion pictures (excepting "news reels"), as delivered without alteration, excepting with the written or telegraphic approval of Distributor, subject to requirements of duly authorized public authorities necessitating any change. Exhibitor also agrees to advertise and announce each motion picture as a "Metro-Goldwyn-Mayer picture." In all newspaper advertising and publicity issued by Exhibitor relating to said motion pictures Exhibitor shall adhere to the form of announcement contained in the advertising matter issued by Distributor. All advertising accessories used by Exhibitor in connection with the exhibition of said motion pictures must be leased from or through Distributor and must not be sold, leased or given away by Exhibitor.

Exhibitor agrees not to advertise or announce in any manner any of said motion pictures prior to nor until after the completion of exhibition thereof by any other exhibitor having the right to a run thereof prior to that herein granted Exhibitor in the same city, town or zone. The Exhibitor shall not advertise or announce in any manner any feature motion picture which may be roadshown by the Distributor and not excepted and excluded from this license until Distributor shall have notified Exhibitor that such motion picture is available for exhibition by Exhibitor, and then only as provided in this Article. Upon any violation

hereof by Exhibitor Distributor shall have the right (in addition to any and all other rights and remedies) to withhold delivery to Exhibitor of any motion picture as to which such violation occurs. Distributor shall not in any wise be liable for any breach of the provisions of this paragraph of Article Twenty-first contained in any other exhibition contract with any other exhibitor.

Taxes

Twenty-second: Exhibitor agrees to pay to Distributor upon demand any tax, fee or other like charge now and/or hereafter imposed or based upon the delivery and/or the exhibition of positive prints of the motion pictures and/or upon the sums payable under this contract by the Exhibitor to Distributor. If under any statute or ordinance any such tax, fee or other like charge is or shall be payable or paid by Distributor and the exact amount payable hereunder by Exhibitor is not therein definitely fixed or cannot be exactly determined then Exhibitor agrees to pay part of any such tax, fee or other like charge, paid or payable by Distributor as shall be fixed in the manner determined by the then President of the American Arbitration Association.

Default

Twenty-third: In the event of default by Exhibitor in exhibiting or paying for any motion picture in accordance with the provisions hereof, or in furnishing any box-office statement or in giving Distributor's representative access to the theatre and or to Exhibitor's books and records in connection with percentage engagements as herein provided, or if Exhibitor shall exhibit or permit the exhibition of any of the motion pictures at any time or place other than as herein specified, or if Exhibitor becomes insolvent or is adjudicated a bankrupt or executes an assignment for the benefit of creditors, or if a receiver is appointed for any of Exhibitor's property, or upon any default by Exhibitor under any other Exhibition contract(s) between the parties hereto or upon failure or refusal of Exhibitor to furnish any box office statement or give Distributor's representative access to the theatre and/or to Exhibitor's books and records in connection with percentage engagements as provided in any such other exhibition contract,

then upon the happening of any one or more of said events Distributor may at its option (1) terminate this contract and/or such other contract(s) or (2) suspend the delivery of additional motion pictures hereunder and/or under any such other contract(s) until such default or defaults shall cease and be remedied. The exercise of any of said remedies shall be in addition to and without prejudice to any right or remedy of Distributor against Exhibitor at law or in equity and/or provided for elsewhere in this agreement by reason of any such breach.

It is agreed that in the event of the failure or refusal of Exhibitor to pay the license fee of any one or more of the motion pictures covered by this contract or any other exhibition contract(s) between the parties hereto, Distributor may at its option (illegible) such failure or refusal a breach of this entire contract and/or such other contract(s) entitling Distributor to recover from Exhibitor as damages therefor the amount payable as license fees in respect of all motion pictures not theretofore exhibited and/or paid for pursuant to the provisions of this contract and/or such other contract(s).

Prevention of Performanee

Twenty-fourth: (a) If the Exhibitor shall be prevented from exhibiting any of the motion pictures licensed hereunder for any cause beyond direct control of Exhibitor then this license in respect to each such motion picture shall terminate and revert to Distributor without liability on the part of Exhibitor provided written notice of such termination and the cause thereof is given to Distributor within a reasonable time after the occurrence of the cause of such prevention of performance.

(b) If for any cause beyond Distributor's direct control or by reason of delays in production, Distributor shall be delayed in delivering any of the motion pictures licensed hereunder, or shall be prevented from generally releasing within the period of one (1) year commencing September 1, 1938, the minimum number of motion pictures provided for in the Schedule hereof, then the failure of performance by Distributor in such respect shall be excused, and all claims or causes of action for damages therefor or arising therefrom are hereby expressly waived by Exhibitor.

Waiver

Twenty-fifth: The waiver by either party of any breach or default by the other party shall not be construed as a waiver of any other or subsequent breach or default by such other party.

Verbal Promises: Representations

Twenty-sixth: This Contract Is Complete And No Promises Or Representations Have Been Made By Either Party To The Other Except As Set Forth Herein.

Percentage Bookings

Twenty-seventh: If this contract calls for payment or any part thereof computed upon the Exhibitor's receipts, such payment or any part thereof shall be made daily, together with a correct itemized statement of the gross receipts of said theatre for admission thereto upon the exhibition date or dates of each motion picture for which payment is so required to be made; and Exhibitor shall also furnish immediately after the conclusion of the engagement of each such motion picture a recapitulating statement and together therewith pay to Distributor any amount due in connection with such engagement. All such statements shall show the number of admissions at the respective admission prices charged at each performance, and the number of free admissions, and shall be signed by Exhibitor's cashier and countersigned by Exhibitor or the manager of the theatre. Should Distributor so require, such itemized statements shall be made upon forms furnished by Distributor. At all times upon such date or dates Distributor is hereby given the right to have its authorized representatives at said theatre to check the sale of tickets of admission to and persons entering the theatre and all receipts therefrom. Exhibitor agrees that such representatives shall for such purpose have free access to all parts of the theatre and theatre premises, including the boxoffice, and the right to examine any and all ticket machines and/or

devices and all tickets and stubs; and shall also have the right to examine all entries in all of Exhibitor's books and records pertaining to gross receipts of each such motion picture at said theatre. Distributor is also hereby given the right to audit all of Exhibitor's books and records at any time after the conclusion of the engagement of any such motion picture, and for such purpose Distributor by its authorized representatives shall be given access to the theatre, including the box-office, and/or other place or places where such books and records are kept. It is expressly understood and agreed that Exhibitor's books and records shall show, among other items, the number of admissions and gross receipts at each separate performance during the engagement of any such motion picture,—matinee, evening and any other performances; and further agreed that if Exhibitor's operating expense is an element in the computation of the amount payable to Distributor hereunder the right herein granted Distributor to audit Exhibitor's books and records shall include the right to examine all of such books and records relating to Exhibitor's operating expenses. It is further agreed that in computing Exhibitor's operating expenses any and all income (such as amounts payable to Exhibitor from renting and/or sub-renting space in the building where the Exhibitor's theatre is located and/or for screen advertising of any kind on the screen in the theatre; etc.) during the period of the engagement of any motion picture on a participating basis shall be deducted from Exhibitor's operating expenses.

It is further agreed that all sums of money accruing to Distributor hereunder as its share of any engagement of a motion picture on a participating basis shall be held by Exhibitor in trust for Distributor.

The Distributor agrees that any information obtained by it pursuant to the provisions of this Article will be treated as confidential, except in any arbitration proceedings or litigation in respect of this contract.

Liquidated Damages, Percentage Bookings

If the license fee of any motion picture licensed hereunder is to be computed either in whole or in part upon a percentage of the admission receipts of said theatre, and if Exhibitor fails or refuses to exhibit such motion picture

as provided in this contract, Exhibitor shall pay to Distributor as liquidated damages for each day that Exhibitor fails or refuses to exhibit such motion picture (in addition to any fixed sums payable hereunder in respect of such motion picture) a sum equal to such percentage of the average daily gross receipts of such theatre during the exhibition thereat of all feature motion pictures distributed by Distributor exhibited by Exhibitor on a "participatng basis" during the period of ninety (90) days prior to the date or dates when such motion picture should have been so exhibited or prior to the date of such failure or refusal to exhibit any of said motion pictures; or, in the event no feature motion picture distributed by Distributor was exhibited thereat on a "participating basis" during said period, then Exhibitor shall pay as liquidated damages for each day Exhibitor fails or refuses to exhibit such motion picture (in addition to any fixed sums payable hereunder in respect of such motion picture) a sum equal to such percentage of the average daily gross receipts of such theatre during the period of thirty (30) operating days immediately prior to the date or dates when such motion picture should have been so exhibited, or prior to the date of such failure or refusal to exhibit any of said motion pictures; provided, however, that if Exhibitor shall exhibit such motion picture for less than the full number of days provided for in this contract, such sum equal to such percentage shall be computed upon a sum equal to seventy-five per cent (75%) of the gross receipts of said theatre for the last day of the exhibition thereat of such motion picture.

Option to Exclude If Group Licensed

Twenty-eighth: If the total number of feature motion pictures (other than Reissues) offered to Exhibitor by Distributor at one time shall have been licensed by Distributor hereunder, Exhibitor shall have the right to exclude from this agreement not to exceed ten per cent (10%) of the total number of feature motion pictures (other than Reissues) licensed hereunder, provided Exhibitor shall not be in default under this agreement insofar as it relates to feature motion pictures. Such privilege of exclusion may be exercised only if Exhibitor shall give to Distributor written notice of Exhibitor's election to exclude any of such pictures not later than fourteen (14) days prior to

the date of availability to Exhibitor of the respective picture. In computing the number of motion pictures which may be excluded hereunder, fractions of one-half or more shall be regarded as one. Upon the exclusion of each feature motion picture the license therefor and all rights with respect thereto shall terminate and revert to Distributor.

General Release

Twenty-ninth: A motion picture shall be deemed generally released (as such term is used in the Schedule herein and elsewhere) when publicly exhibited under license by Distributor (excepting any roadshow, tryout, preview or pre-release exhibition thereof) at any motion picture theatre in the United States for three (3) consecutive days, at prices usually charged for admission to such theatre, and the first day of such exhibition shall then be deemed to be the date of general release. Pre-release exhibition shall be deemed to be any exhibition because of seasonal conditions making desirable exhibition in advance of general release as herein defined. A feature motion picture of which the date of general release in the United States by Distributor occurs during the period commencing September 1, 1938, and ending August 31, 1939, even though produced and/or roadshown prior to September 1, 1938, shall be considered as one of Distributor's 1938-39 feature productions, as such term is used in the Schedule herein.

Road Shows

Thirtieth: The terms "roadshow" and "roadshowing" (as used in the Schedule herein and elsewhere) means the exhibition of a feature motion picture at theatres at which admission prices for evening performances, during such exhibitions thereof, are not less than One Dollar ($1.00) for the majority of the orchestra seats.

Any feature motion pictures (including those licensed hereunder) may be roadshown at such theatres and at such times and for such periods as Distributor may elect, provided that not more than four (4) of the feature motion pictures licensed hereunder shall be roadshown in the territory served by Distributor's Exchange(s) serving the Exhibitor's theatre except that in the case of roadshowings in New York City and/or in Los Angeles there shall be no

such limitation. No feature motion picture licensed hereunder, and roadshown, shall in any event be deemed available for exhibition hereunder (unless expressly made available by the Distributor at an earlier date) prior to the completion of its roadshowing; but the foregoing shall not be deemed to include among the feature motion pictures licensed hereunder any whose date of general release in the United States occurs after August 31, 1939, nor to affect Distributor's right to except and exclude next below given.

If and when such roadshow exhibition shall be in the territory served by the Distributor's Exchange(s) serving the Exhibitor's theatre, Distributor shall have the right to except and exclude from this license not to exceed four (4) of the feature motion pictures so roadshown upon sending to the Exhibitor written notice to such effect not later than fourteen (14) days after the completion of such roadshow exhibition in such territory, provided Distributor shall by like notice except and exclude such feature motion picture from all other contracts containing this clause licensing the exhibition of such feature motion pictures in such territory. Such exception and exclusion herefrom shall not be affected in case Distributor shall inadvertently omit to send such notice to any of such other exhibitors.

For each feature motion picture licensed hereunder that Distributor shall except and exclude, as aforesaid, Exhibitor is hereby granted the option to except and exclude from this license one of the other feature motion pictures licensed hereunder, but only if Exhibitor shall give to Distributor written notice to that effect not later than fourteen (14) days before the date fixed for the exhibition hereunder of such other feature motion picture. Distributor may exhibit and/or license the exhibition of any and all feature motion pictures excepted and excluded from this license by Distributor and/or Exhibitor, as aforesaid, when and where desired by Distributor, free from all claims of Exhibitor in respect thereof.

Wherever the term feature motion picture(s) is used in this Article, such shall not be deemed to refer to or include any of the feature reissues licensed hereunder.

Acceptance of Application

Thirty-first: This instrument shall be deemed an application for a license under copyright only and shall not become binding until accepted in writing without alteration or change by an officer of or any person duly authorized by Distributor and notice of acceptance sent to Exhibitor as herein provided. Deposit by Distributor of any check or other consideration given by Exhibitor at the time of application as payment on account of any sums payable hereunder or the delivery of a print or sound records of any of the motion pictures or the furnishing of any advertising accessories shall not be deemed an acceptance hereof by Distributor. Unless notice of acceptance of this application by Distributor is sent to Exhibitor by mail or telegraph within fifteen (15) days after the date thereof if said theatre of Exhibitor is located east of the Mississippi River, and within thirty (30) days after the date thereof if located west of said River, said application shall be deemed withdrawn and Distributor shall forthwith return any sums paid on account thereof by Exhibitor. A copy of this application, signed by Exhibitor shall be left with Exhibitor at the time of signing, and in the event of acceptance thereof as above provided, a duplicate copy, signed by Distributor shall be forwarded to Exhibitor.

Separate Applications: It is expressly understood and agreed that the approval or rejection of this application by Distributor shall not be deemed an approval or rejection of any other application or applications signed by Exhibitor at the same time or at any other time.

(over)

2962 The following is Film License Agreement between RKO Radio Pictures, Inc. and Jackson Park Theatre dated November 30, 1938, from PLAINTIFFS' EXHIBIT 20:

2963 Exhibitor's Confirmation Copy

Page Two

Branch Chicago, Illinois Theatre Jackson Park

Town or City Chicago, Illinois Contract No.

RKO Radio Pictures, Inc.

License Agreement

Schedule

Sales Possibility

Salesman R. V. Nolan Block B Page No. 52 Line No. 5

Film or Disc	Equipment	House Classification	Class No.	Key No.
Film				—481

1938-1939 Feature Productions

The Exhibitor agrees that the Distributor shall have the right to designate not more than ... photoplays to be played on the percentage terms listed in this license, and to designate the terms upon which the remaining photoplays shall be exhibited. The Exhibitor further agrees that the Distributor, in its sole discretion, may interchange the license fees specified in the Schedule to be payable in respect of any photoplay with the license fees specified to be payable in respect of any other photoplay to be exhibited under this agreement. The Distributor agrees to interchange and/or designate the terms for each photoplay by mailing notice in writing to the Exhibitor prior to the exhibition dates. The Exhibitor agrees to accept such photoplays on said terms and to give such photoplays playdates in accordance with clause seven of this license agreement and further agrees that the Distributor may designate of the photoplays to be played on percentage to be played on preferred time including a Saturday and/or a Sunday.

If the license fees for any of the photoplays covered by this agreement are to be determined either in whole or in part upon the admissions receipts of the Exhibitor's theatre the Distributor may employ any checking agency or its employees as the authorized representative of the Distributor provided for in Article Third hereof. If the Exhibitor shall refuse access to the theatre and its box office to any authorized representatives of the Distributor, the Distributor in addition to all other rights or remedies hereunder may terminate the license herein granted in respect of the picture at the time being exhibited and immediately recover possession of the print of such picture without affecting this agreement insofar as it relates to other pictures.

This License Agreement Does Not Include The George O'Brien Pictures Unless Definitely Indicated In The Schedule.

Prod. No.	Title	No. Cons. Days	Sat. Sun. Incl.	Guaranteed License Fee
(5)	Five Features	3 4		76.50
(6)	Six Features	3 4		67.50
(15)	Fifteen Features	2 3		50.00
(12)	Twelve Features	2 3		35.00

Approval this deal necessitates following:

2nd Astaire-Rogers 37-38 to be 76.50
2nd & 3rd Breens 37-38 to be 69.00 each
The Rat to be $36.00.
Smashing Rackets to be 64.00.
Hawaii Calls to be $69.00;

Cancel six singles @ 6.00, and 2 singles at $5.00.
(Stamp), Illegible.

This license agreement does not include any feature or short subject pictures released by the Distributor during the 1938-1939 season which are produced by independent producers who have contracts with the Distributor providing that the pictures of such independent producers shall be licensed to exhibitors under separate exhibition contracts nor does it include any feature or short subject pictures produced in color unless such color pictures are definitely indicated in the Schedule as being licensed hereunder.

The license fees above set forth opposite the respective groups of pictures are the actual license fees for each of such pictures in each group and the pictures are not licensed on an average basis.

Number of Features Offered 48
Number of Features Contracted For 38
Total Feature License Fees (Including Score)

Admission Prices—The Exhibitor during the whole of the licensed exhibition period of each of the motion pictures exhibited hereunder agrees to and shall charge for admission to said theatre the following prices:

Matinee:

Adults, orchestra 15c balcony
children, orchestra 10c balcony

Evening:

Adults, orchestra 25c balcony
children, orchestra 10c balcony

Unless a greater admission price is specified above, the Exhibitor will charge an admission of not less than fifteen cents (15c) for adults at evening performances, and not less than ten cents (10c) at all other performances. If higher admission prices are specified above, however, such higher prices shall be charged.

If during any such period less than said admission prices is charged, the Distributor in addition to all other rights hereunder shall have the right: (a) to immediately terminate the license of the motion picture then being exhibited, by written notice to such effect to the Exhibitor and upon the giving of such notice, the license of such motion picture shall forthwith terminate and revert to the Distributor; or (b) provided the Exhibitor is granted herein a period of "clearance" to reduce such period by not to exceed one-half in respect to each of the motion pictures thereafter deliverable hereunder; or (c) provided no period of clearance is specified in the Schedule to withhold for a period not to exceed sixty (60) days notice of the date when each motion picture thereafter deliverable hereunder will be available for exhibition by the Exhibitor; and as to each such motion picture the "run" thereof, if any, granted the Exhibitor shall be deemed revoked and the Exhibitor

agrees to exhibit each such motion picture after notice of the available date thereof upon the date or dates determined as provided in Clause Seven hereof.

Advertising Accessories—The Exhibitor agrees to lease from the Distributor or the Distributor's authorized agent for use only in connection with the exhibition of each of the motion pictures exhibited hereunder and agrees not to sublease or sell the following advertising accessories:

Item	One Sheet	Three Sheets	Six Sheets	24 Sheets
Quantity				
Amount $				

Item	11x14 Colored	22x28 Colored	14x36 Colored	40x60 Colored
Quantity				
Amount $				

Item	Stills 8x10	Color-Glos Stills	1 Color Slides	Press Books	Heralds	Mats
Quantity						
Amount $						

Item	Standard Window Cards	Miniature Window Cards	Jumbo Window Cards	Window Standees	Novelties
Quantity					
Amount $					

Total

Run—Clearance—Additional Remarks (No Clearance On Short Subjects And Pathe Newsreel):

To Play First Week Release.
Hamilton Not To Play Before Second Week.
New Woodlawn Not To Play Before Second Week.
Lexington Not To Play Before First Week.

Exhibitor agrees to play and pay for not less than 13 single reels and 13 two reel comedies to be played at the terms indicated on this contract and to be selected from the regular one and two reel subjects announced for the 1938-1939 season.

Title or Series	No. Cons. Days	No. Bought	License Fee Per Subject	Total For Series
Two Reel Comedies	2/3	12	7.50	90.00
Single Reels	2/3	13	5.00	65.00
Quintuplet 38/39	2/3	1	12.50	12.50

Pathe News	Sat.	Sun.	Mon.	Tue.	Wed.	Thu.	Fri.	Print No.
52 Odd Issues								
52 Even Issues								

Pathe News	Starting Date	No. Bought	Terms: No. Cons. Days	License Fee Per Issue	Total Amount
52 Odd Issues					
52 Even Issues					

The Exhibitor agrees to play and or pay for not less than Three features per Month commencing 1st Week; One two-reel comedies per Month commencing 1st Week; One one-reel subjects per Month commencing 1st Week; Pathe Newsreels per weeking commencing if and as available until all pictures herein are exhibited and or paid for. All pictures must play within thirty (30) days of availability. The Exhibitor agrees to pay each week the sum of $ until the full amount of $ is paid for short subjects including Pathe Newsreels listed in this contract irrespective of the number of short subjects and Pathe Newsreels used each week. Payments to start 193

In Witness Whereof B. Salkin the Exhibitor, operating the Jackson Park Theatre, located at in the City of Chicago, Illinois has on November 30, 1938 executed this application, which upon written acceptance thereof by the Distributor shall be deemed to be the license

of the said Exhibitor for the exhibition of the motion pictures specified in the Schedule, but only at the said Theatre in accordance with the terms and conditions hereof.

Jackson Park Theatre,
By Exhibitor B. Safkin,

Personally Guaranteed by

Accepted Dec 10 1938
RKO Radio Pictures, Inc.
By (Illegible)
General Sales Manager

Direction To Salesmen: While you have every right to trade among prospective customers to obtain the best offer possible for your product, after you have selected a particular exhibitor whose offer you believe to be the best obtainable and take a written application from such exhibitor, you are hereby directed to forward the application to the office of your company and make no further effort to sell the same service to any other exhibitor directly competing with such exhibitor until the application so forwarded has been duly rejected, accepted or withdrawn in accordance with its terms. A violation of this direction will subject you to discharge.

2964 RKO Radio Pictures, Inc.

Agreement, made in one or more counterparts, between RKO Radio Pictures, Inc., a corporation (hereinafter referred to as "The Distributor"), part of the first part, and Exhibitor hereinafter named and referred to as the "Exhibitor," operating the theatre or theatres hereinafter designated, party of the second part.

Witnesseth:

License.

The parties hereto agree as follows:

First: Subject to the payment by the Exhibitor of the fixed sums and or percentages specified in the schedule on the reverse side hereof, which schedule is incorporated herein and made a part of this agreement, and subject to all of the other terms and conditions herein provided, the Distributor hereby grants, and agrees to grant, to the

Exhibitor and the Exhibitor hereby accepts, and agrees to accept, a limited license under the copyrights of the respective motion pictures designated and described in the schedule (hereinafter called the pictures) and under any copyrights of any matter included in any sound recorded for reproduction in connection with the exhibition of any of the pictures, to exhibit publicly the respective pictures and to reproduce for public performances such recorded sound in synchronism therewith, but only at the theatre described in the schedule (hereinafter called the theatre) for the number of days specified in the schedule, which days shall be only the dates determined as provided in Article Seventh hereof, and at no other time or place and for no other use or purpose. The license to reproduce such recorded sound, or any thereof, is granted and agreed to be granted only upon the express warranty and agreement by the Exhibitor and upon the express condition that (a) the sound reproducing equipment in the theatre will operate reliably and efficiently to reproduce such recorded sound with adequate volume and high quality, whether it is recorded upon a print or upon separate records, discs or other similar devices; and (b) if copyrighted musical compositions shall be included in such recorded sound, the Exhibitor will have, at the time of the reproduction thereof, an effective license from the copyright proprietor thereof or from any licensee of such copyright proprietor to perform publicly such copyrighted musical compositions. The Distributor may record such sound, or any part thereof, on the prints of the respective pictures or on separate records, discs or other devices, as the Distributor may from time to time elect and all references to a print made herein shall be deemed to include any records, discs or other devices upon which sound is recorded for reproduction in connection with the exhibition of such print. The license herein granted in respect of each picture shall extend only to the exhibition of the print of such picture delivered by the Distributor to the Exhibitor pursuant to Article Sixth hereof, and shall not extend to the exhibition of any other print.

If more than one theatre is designated in the schedule, no license is granted or agreed to be granted hereunder for the exhibition of any picture at more than one of such theatres unless it is otherwise specifically so stated in the schedule.

This agreement licenses the exhibition of pictures generally released by the Distributor for distribution in the United States of America during the period commencing September 1, 1938, and ending August 31, 1939, only: Provided, However, that in case the Distributor shall generally release after August 31, 1939 and prior to December 31, 1939 any picture or pictures which it shall have designated to exhibitors generally as a 1938-1939 picture or as 1938-1939 pictures, such picture or pictures shall be included in this license and shall be exhibited by the Exhibitor hereunder, unless the Exhibitor, on or before September 10, 1939, shall notify the Distributor, in writing, that the Exhibitor has elected to reject such picture, or, if more than one picture, that the Exhibitor has elected to reject all (but not less than all) of such pictures. In the event that the Exhibitor shall give the Distributor any such written notice of rejection, such picture or pictures shall be excepted and excluded from this license. All pictures released after December 31, 1939 are excluded from this license.

The term of this agreement, unless otherwise provided in the schedule, shall be for a period of eighteen (18) months from the time fixed as hereinafter provided for the exhibition of the first picture hereunder.

Time and Place of Exhibition.

Second: The Exhibitor agrees to exhibit the pictures under the license herein granted in the order of their release, if and as available, only at the theatre on the exhibition date or dates fixed in the schedule or determined as hereinafter provided and subject to all of the terms and conditions of this license agreement. The Exhibitor will not allow any positive print to leave the Exhibitor's possession during the period specified for the exhibition thereof by the Exhibitor and will not exhibit or permit the exhibition of any such positive print at any other time or place.

Payment.

Third: The Exhibitor agrees to pay for the license to exhibit each picture the fixed sums specified in the schedule at least three (3) days in advance of the date of shipment of the positive print of such picture from the Distributor's exchange or from the last previous exhibitor, as the case may be.

Percentage Bookings.

If it is provided in the schedule that all of any part of the license fee for the exhibition of any picture or pictures shall be computed upon the Exhibitor's gross receipts, such payment shall be made immediately after the last exhibition upon the last day of exhibition of each such picture and shall be accompanied by a correct itemized statement of the gross receipts of the theatre for admission thereto upon the exhibition date or dates of the particular picture or pictures. Should the Distributor so require, such itemized statement shall be made upon forms furnished by the Distributor. Upon such exhibition date or dates the Distributor or its authorized representative may verify the sale of all tickets of admission to the theatre and may examine the books and records of the Exhibitor insofar as they relate to such gross receipts and for any such purpose may have acess to the theatre and its box office. The Distributor or its authorized representative also may have access to all of the Exhibitor's books and records for the purpose of verifying such box office statement and if the operating expenses of the theatre are an element to be considered in computing the amounts payable to the Distributor hereunder, the Distributor or its authorized representative may examine and audit all of the Exhibitor's books and records relating to the Exhibitor's operating expenses for a period of sixty (60) days after the receipt by the Distributor of the final box office statement and/or statement of operating expenses. Any information obtained by the Distributor pursuant to the provisions of said Article Third shall be treated as confidential except in any litigation in respect of this agreement. The Distributor agrees that unless its authorized representative shall be a regular employee of the Distributor it will not employ as its authorized representative any person who is a resident of or regularly employed in the place where the theatre is located, except with the written consent of the Exhibitor. In accounting to the Distributor hereunder the Exhibitor shall account on the basis of admission prices to the theatre for each person admitted to the theatre except only for a customary and reasonable number of free admissions to representatives of the press and or in consideration of theatre advertising.

Payment on Account. Clearance and Run.

Fourth: Payment, if any made upon the execution hereof by the Exhibitor shall be deemed payment on account of the sums last payable hereunder.

Fifth: (a) in the event that it is stated in the schedule that the theatre shall have "clearance" or a specified "run" and the Exhibitor shall have exhibited each of the pictures on the dates determined as is in Article Seventh hereof provided, the Distributor will not grant a license to any other party to exhibit any of the pictures so exhibited by the Exhibitor at any theatre specifically named in the schedule or within the territorial limits specified in the schedule, as the case may be, on a date prior to the expiration of the so-called "clearance period" or prior to the so-called "run" granted the Exhibitor. The period of "clearance" in the case of each picture shall be computed from the last day of the exhibition thereof. If the "clearance" is granted against a named theatre or theatres and it is clearly indicated that it is the intention of the Distributor to grant such "clearance" against all theatres in the immediate vicinity of the Exhibitor's theatre, then, unless otherwise provided in the schedule, such "clearance" shall include any theatre hereafter erected or opened in such vicinity; if such theatre is recognized in the motion picture industry as being in direct opposition to the theatre. Anything herein contained to the contrary notwithstanding, no "clearance" shall be given in respect of any picture not exhibited on the date or dates originally designated by the Exhibitor or the Distributor in accordance with Article Seventh hereof unless the parties mutually shall agree otherwise in writing.

First Run Exhibitions.

(b) If the Exhibitor is granted a first run of the said motion pictures, the Exhibitor shall exhibit each of the feature motion pictures excepting those described in Paragraph (e) of this Clause within the period beginning with the date scheduled and announced by the Distributor for the general release of each feature motion picture in the territory wherein is located the exchange of the Distributor out of which the Exhibitor is served and ending one hundred and twenty (120) days thereafter, notwithstanding any provision of Article Seventh hereof to the contrary. If the first exhibition date of any of the

said motion pictures shall occur on a date later than ninety (90) days after its scheduled and announced general release date, then the period of clearance of such motion picture shall be reduced so as to expire one hundred and twenty (120) days after said scheduled date of its general release. If the Exhibitor is granted a first run of the said motion pictures and the Exhibitor fails to exhibit any feature motion picture within said period of one hundred and twenty (120) days, the grant of the said first run and the clearance period in respect thereof shall be deemed waived by the Exhibitor and the license fee as to such feature motion picture shall thereupon forthwith become due and payable to the Distributor, with the right to the Exhibitor to exhibit such feature motion picture as hereinafter in Paragraph (f) of this Clause provided.

Second Run Exhibitions.

(c) If the Exhibitor is granted a second run of the said motion pictures and any other exhibitor having been granted the first run thereof immediately prior to such second run fails to exhibit any of the feature motion pictures, excepting those described in Paragraph (e) of this Clause within the said period of one hundred and twenty (120) days specified in Paragraph (b) of this Clause, the Exhibitor shall exhibit each such feature motion picture within the period beginning with the date of the expiration of the said one hundred and twenty (120) days period and ending fourteen (14) days thereafter, notwithstanding any provision of Article Seventh hereof to the contrary. If the Exhibitor is granted a second run of the said motion pictures and the Exhibitor fails to exhibit any feature motion picture within said fourteen (14) days period the grant of such second run and the clearance period if any in respect thereof shall be deemed waived by the Exhibitor and the license fee as to such feature motion picture shall thereupon forthwith become due and payable to the Distributor with the right to the Exhibitor to exhibit such feature motion picture as hereinafter in Paragraph (f) of this Clause provided.

Subsequent Runs Exhibitions.

(d) If the Exhibitor is granted a run subsequent to a second run of the said motion pictures and any other

Exhibitor having been granted the second run thereof immediately prior to such subsequent run fails to exhibit any of the feature motion pictures, excepting those described in Paragraph (e) of this Clause within the said period of fourteen (14) days specified in Paragraph (c) of this Clause the Exhibitor shall exhibit each feature motion picture within the period beginning with the date of the expiration of the said fourteen (14) day period and ending seven (7) days thereafter, notwithstanding any provision of Article Seventh hereof to the contrary. If the Exhibitor is granted a run subsequent to a second run of the said motion pictures and the Exhibitor fails to exhibit any feature motion picture within said seven (7) days period, the grant of such subsequent run and the clearance period if any in respect thereof shall be deemed waived by the Exhibitor and the license fee as to such feature motion picture shall thereupon forthwith become due and payable to the Distributor with the right to the Exhibitor to exhibit such feature motion picture as hereinafter in Paragraph (f) of this Clause provided.

Extended Runs.

(e) Any of the motion pictures which shall have been exhibited at any theatre in the said territory for more than one show week prior to the run granted the Exhibitor shall be excepted from the provisions of this Clause.

Exhibition After Revocation of Run and Clearance.

(f) Upon the waiver of the grant of the run and or the clearance period of any feature motion picture as provided in Paragraphs (b), (c) or (d) of this Clause, the Exhibitor upon payment of the sum or sums payable hereunder as provided in this Clause for the license to exhibit such feature motion picture, shall have the right to exhibit the same hereunder upon a date or dates not in conflict with any run and or clearance period granted or hereafter granted to other exhibitors, upon written request mailed or delivered to the Distributor within sixty (60) days after the last date upon which such feature motion picture should have been exhibited by the Exhibitor as provided in this Clause. Failing to make such request within said period of sixty (60) days the license to exhibit such feature motion picture granted hereunder shall terminate and revert to the Distributor.

If the provisions of this Clause shall in anywise be in conflict with the provisions of any other license agreement made and entered into by the Distributor with any other exhibitor prior to September 1, 1933, the provisions of this Clause shall be deemed to be subordinate and subject to the provisions of such other license agreement.

Delivery and Return of Prints.

Sixth: The Distributor agrees to deliver to the Exhibitor a positive print suitable for exhibition of each of the pictures for exhibition at the theatre on the dates on which such exhibitions are licensed hereunder. Delivery of such positive print by the Distributor to the Exhibitor at the Distributor's exchange or to a common carrier or to the United States postal authorities for mailing or to any agent of the Exhibitor shall be deemed delivery by the Distributor to the Exhibitor hereunder.

All deliveries other than at the Distributor's exchange shall be made in time to enable the carrier thereof, in accordance with the carrier's time schedule, to deliver prints to the Exhibitor or at the place where the theatre is located at least one hour before the usual time for the opening of the theatre.

The Exhibitor agrees to return each positive print received by the Exhibitor hereunder, with the reels and containers furnished therewith, to the exchange of the Distributor from which the exhibitor is served, or as otherwise directed by the Distributor, immediately after the last exhibition of such positive print, in the same condition as when received by the Exhibitor, reasonable wear and tear due to the proper use thereof excepted. The Exhibitor agrees to pay all costs of transportation of such positive prints, reels and containers from the Distributor's exchange or the last previous exhibitor having possession of any of such positive prints (as the case may be) and return to the Distributor's exchange; or if directed by the Distributor, to ship such positive prints elsewhere than to the Distributor's exchange, transportation charges collect. It is agreed that the delivery of a positive print properly directed and packed in the container furnished by the Distributor therefor, to a carrier designated or used by the Distributor and proper receipt therefor, obtained

by the Exhibitor, shall constitute the return of such positive prints by the Exhibitor.

If the Exhibitor fail to or delays the return of any positive print to the Distributor or fails to forward or delays forwarding (as directed by the Distributor) any such print to any other exhibitor the Exhibitor agrees to pay the Distributor the damage, if any, so caused the Distributor and in addition the damage, if any, so caused such other exhibitor.

Selection of y dates.

Seventh: Unless otherwise agreed upon or unless definitely specified or otherwise provided for in the Schedule, the exhibition date or dates of each of said motion pictures shall be determined as follows:

1. Subject to prior runs and or clearance granted or hereafter granted by the Distributor to other exhibitors and within a reasonable time after a print or prints of any of said motion pictures are received at the exchange of the Distributor out of which the Exhibitor is served, and provided the Exhibitor is not in default hereunder, the Distributor shall mail to the Exhibitor a notice in writing of the date when each such motion picture will be available for exhibition by the Exhibitor (which date is hereinafter referred to as the "available date"). Such notice shall be mailed to the Exhibitor at least fifteen (15) days before the available date therein specified.

2. Within fourteen (14) days after the mailing of such notice, the Exhibitor shall select an exhibition date or dates not theretofore assigned to another exhibitor or other exhibitors, within the period commencing with the available date and ending thirty (30) days thereafter and give to the Distributor written notice of the date or dates so selected.

3. Upon the failure of the Exhibitor to so select such date or dates the Distributor shall designate such date or dates by mailing written notice thereof to the Exhibitor. In such event the license fee payable hereunder for such picture shall become due and payable on the date or dates so designated by the Distributor and the Distributor shall be under no obligation to ship or tender a print picture to the the Exhibitor shall have confirmed such date or dates in writing after the designation thereof by the Distributor.

Loss of and Damage to Prints.

Eighth: The Exhibitor shall pay to the Distributor a sum equal to the cost of replacement at the Distributor's exchange for each linear foot of any positive print lost, stolen or destroyed or injured in any way in the interval between the delivery thereof by the Distributor and the return thereof by the Exhibitor in full settlement of all claims for such loss, theft, destruction or injury. Such payment, however, shall not transfer title to or any interest in any such positive print to the Exhibitor or any other party, nor release the Exhibitor from liability arising out of any breach of this agreement. The Distributor shall at the option of the Exhibitor repay or credit to the Exhibitor any sums paid by the latter for lost or stolen prints, excepting "news reels," upon their return to the Distributor within sixty (60) days after the date when the same should have been returned hereunder. The Exhibitor shall not be liable for the damage or destruction of any positive print, provided the Exhibitor establishes such damage or destruction occurred while in transit from the Exhibitor. The Exhibitor shall immediately notify the Distributor's exchange by telegram of the loss, theft or destruction of or damage or injury to any positive print. If any positive print shall be received from the Exhibitor by the Distributor or any subsequent exhibitor in a damaged or partially destroyed condition it shall be deemed to have been so damaged or destroyed by the Exhibitor unless the latter, prior to the second public exhibition thereof shall have telegraphed the Distributor's exchange that such print was received by the Exhibitor in a damaged or partially destroyed condition, and setting forth fully the nature of such damage and the amount of footage so damaged or destroyed.

Description of Pictures.

Ninth: (a) The Distributor shall have and hereby reserves the right in the sole discretion of the Distributor to change the title of any of the said motion pictures, to make changes in, alterations and adaptations of any story, book or play and to substitute for any thereof any other story, book or play. The Distributor also shall have and hereby reserves the right to change the director, the cast or any member thereof of any said motion pictures.

(b) The Exhibitor shall not be required to accept for

any feature motion picture described in the Schedule as t
of a named star or stars, director or named well-kno
author, book or play, any motion picture of any other s
or stars, director, author, books or play, nor to acc
any other feature motion picture in place of any ther
which in the Schedule is designated "no substitutes." T
right of rejection conferred on the Exhibitor by this Cla
is in addition to the right of exclusion provided in Arti
Sixteenth hereof.

(c) There shall not be included in this agreement (
less otherwise indicated in the Schedule) any of the f
lowing types of motion picture: (1) reissues of old ne
tives; (2) old negatives retitled; or (3) foreign pictu
produced by foreign producers. A foreign picture p
duced by a corporation subsidiary to the Distributor
affiliated with the Distributor through stock ownership
a foreign picture in which the Distributor or any su
subsidiary or affiliated corporation of the Distributor sh
have a financial interest shall not be deemed to be
foreign picture produced by a foreign producer, describ
in clause (3) above and any such picture shall be includ
in this agreement.

The Distributor warrants that none of said motion pi
tures contain or will contain any advertising matter f
which compensation is received by the Distributor or a
corporation subsidiary to or affiliated with the Distributo

Assignment Upon Sale of Theatre.

Tenth: This agreement shall not be assigned by eith
party without the written acceptance of the assignee a
the written consent of the other party; provided, that
the Exhibitor sells or disposes of his interest in the th
atre, he may assign this agreement to the purchaser
such interest without the written consent of the Distribut
and such assignment shall become effective upon th
written acceptance thereof by the assignee; such assig
ment, however, shall not relieve the Exhibitor of liabili
hereunder, unless the Distributor consents in writing t
release the Exhibitor from such liability. In the event tha
the Exhibitor shall cease to operate, or shall cease to re
main in possession of, the theatre and shall not assig
this agreement as herein permitted, the Distributor ma
at its election, cancel and terminate this agreement im
mediately, without waiving or impairing any other rig
or remedy afforded the Distributor in law or in equity.

Exhibition and Advertising.

Eleventh: The Exhibitor agrees to run pictures (excepting "news reels") as delivered without alteration, excepting with the written or telegraphic approval of the Distributor, subject to requirements of duly authorized public authorities necessitating any change. The Exhibitor also agrees to advertise and announce each picture as a "Radio Picture." In all newspaper, advertising and publicity issued by the Exhibitor relating to the pictures, the Exhibitor shall adhere to the form of announcement contained in the advertising matter issued by the Distributor.

Unless this agreement expressly provides for the "first run" in the City or Town wherein the theatre is located, the Exhibitor agrees not to advertise any of the pictures by means of lithographs, slides, trailers, lobby displays, newspaper announcements, advertising or otherwise prior to, and until after the completion of, the exhibition thereof by any other exhibitor having the right of the "first run" or any other prior run thereof in said City or Town.

The Distributor shall not in any wise be liable for any breach of the provisions of the immediately preceding paragraph contained in any other agreement with any other exhibitor.

Taxes.

Twelfth: The Exhibitor shall pay to the Distributor upon demand, any tax, fee or other like charge now and/or hereafter imposed or based upon the delivery and/or the exhibition of prints of motion pictures and/or upon the sums payable under this license by the Exhibitor to the Distributor. If under any statute or ordinance any such tax, fee or other like charge is, or shall be payable or paid by the Distributor and the exact amount payable hereunder by the Exhibitor is not therein definitely fixed or cannot be exactly determined, then the Exhibitor shall pay such part of any such tax, fee or other like charge paid or payable by the Distributor as shall be fixed in the manner determined by the then President of the American Arbitration Association.

Delay In or Prevention of Performance.

Thirteenth: If either the Exhibitor or the Distributor shall be prevented from performing its obligations hereunder with respect to any picture or pictures for causes

beyond its direct control, the license in respect of each su picture or pictures shall terminate and revert to the Di tributor without liability on the part of either party, pr vided that the party prevented from performing sha give reasonable written notice of the prevention of pe formance and the nature of such prevention.

Waiver-Verbal Promises: Representations.

Fourteenth: The waiver by either party of any brea or default by the other party shall not be construed as waiver of any other or subsequent breach or default such other party.

Fifteenth: This agreement is complete and no promi or representations have been made by either party to t other party as set forth herein.

Option To Exclude If Group Licensed.

Sixteenth: If in this license agreement the total nu ber of feature motion pictures offered to the Exhibitor the Distributor, at one time, shall have been licensed by t Distributor hereunder and unless the Exhibitor is grant other rights to exclude pictures hereunder, the Exhibit may exclude from this license agreement not to exceed t (10%) percent of the total number of feature moti pictures licensed hereunder.

Such privilege of exclusion may be exercised only if t Exhibitor shall give to the Distributor written notice the Exhibitor's election to exclude any of said featu motion pictures within fourteen (14) days after notice availability of such picture to the Exhibitor.

In computing the number of feature motion pictu which may be excluded hereunder, fractions of more th one-half (½) shall be regarded as one (1).

Upon the exclusion of each feature motion picture, t license therefore and all rights thereunder shall termina and shall revert to the Distributor.

Acceptance by Distributor.

Seventeenth: Until accepted in writing by an offi of or any person authorized by the Distributor and not of acceptance sent to the Exhibitor this instrument sh be deemed only an application for a license under Co right, and may be withdrawn by the Exhibitor any ti before such acceptance. Unless such notice of acceptan

is sent the Exhibitor by mail or telegraph within fifteen (15) days after the date thereof, if the said theatre of the Exhibitor is located East of the Mississippi River, and within thirty (30) days after the date thereof if located West of said river, said application shall be deemed to have been withdrawn. The deposit by the Distributor of any check or other consideration given by the Exhibitor at the time of application as payment for any purpose or the delivery of a print of any of said motion pictures shall not be deemed an acceptance hereof by the Distributor.

Liquidated Damages, Percentage Bookings.

Eighteenth: If the license fee of any picture is to be computed either in whole or in part, upon a percentage of the gross admission receipts of the theatre, and if the Exhibitor fails or refuses to exhibit such picture as provided in this agreement, the Exhibitor shall pay to the Distributor as liquidated damages for each day that the Exhibitor fails to refuse to exhibit such picture (in addition to any fixed sums payable hereunder in respect of such picture) a sum equal to such percentage of the average daily gross receipts of the theatre during the period of thirty (30) operating days immediately prior to the date or dates when such picture should have been so exhibited, provided, however, that if the Exhibitor shall exhibit such picture for less than the full number of days provided for in this agreement, such sum equal to such percentage shall be computed, upon a sum equal to seventy-five per cent (75%) of the gross receipts of the theatre for the last day of the exhibition thereat of such picture.

Road Shows.

Nineteenth: (a) The Distributor shall have the right to exhibit and/or cause to be exhibited as a "roadshow," at any time prior to the exhibition thereof hereunder, such of the motion pictures licensed hereunder as the Distributor may from time to time select and determine, provided, however, that such roadshow exhibitions shall be at theatres at which admission prices for evening performances, during such exhibitions thereof, of not less than one dollar shall be charged for the majority of the orchestra seats, and further provided that, except in the cities of New York and Los Angeles, not more than two of such motion pictures shall be so roadshown.

(b) If and when any such roadshow exhibition shall be in the City of New York and/or the City of Los Angeles, and if the Exhibitor's theatre is situated in the territory then served by the Distributor's exchange or exchanges located in New York or in Los Angeles, as the case may be, the Distributor shall have the right to except and exclude from this license not to exceed two of such motion pictures so roadshown in each of both of said territories, upon sending to the Exhibition written notice to such effect not later than four (4) weeks after the commencement of such roadshow exhibition and provided that the Distributor shall by like notice except and exclude such motion picture from all other license agreements containing this Clause and licensing the exhibition of such motion picture in such territory. The exception and exclusion of any such motion picture in the territory then served by the Distributor's exchange or exchanges located in the City of Los Angeles, or in the City of New York, as the case may be, shall not be deemed to require the Distributor to except and exclude the same motion picture in both said territories.

(c) If and when any such roadshow exhibition, excepting those in the City of New York and/or in the City of Los Angeles, shall be in the territory served by the Distributor's exchange or exchanges serving the Exhibitor's theatre, the Distributor shall have the right to except and exclude from this license not to exceed two of such motion pictures so roadshown upon sending to the Exhibitor written notice to such effect within seven (7) days after the commencement of such roadshow exhibition and provided that the Distributor shall by like notice except and exclude each such motion picture from all other license agreements containing this Clause and licensing the exhibition of such motion picture in such territory.

(d) The inadvertent omission to send to any of such other exhibitors the notice provided for in Paragraphs (a) and (b) of this Clause shall not be deemed to affect the exception and exclusion from this license of any such motion picture.

(e) The Distributor may so exercise such right to except and exclude any such motion picture from time to time, in the respective territories, as above defined, in the United States. Any motion picture so roadshown in any place in the United States, and not excepted and excluded

from this license as aforesaid, shall not be deemed available for exhibition hereunder until after the completion of such roadshowing of such motion picture in the United States, and such motion picture shall be exhibited hereunder when generally released by the Distributor and as and when available for exhibition by the Exhibitor, and the term of this license agreement specified in Article First shall be in respect to each such motion picture, extended to and including the date or dates of exhibition by the Exhibitor hereunder of each thereof.

(f) For each motion picture that the Distributor shall except and exclude, as aforesaid, the Exhibitor is hereby granted the option to except and exclude from this license (in addition to those which may be excluded as provided in Article First and Sixteenth) one of the other motion pictures licensed hereunder, but only if the Exhibitor shall give to the Distributor written notice to such effect not later than fourteen (14) days before the date fixed for the exhibition hereunder of such other motion picture. The Distributor may exhibit and or license the exhibition of any and all motion pictures excepted and excluded from this license by the Distributor and or the Exhibitor, as aforesaid, when and where desired by the Distributor, free from all claims of the Exhibitor in respect thereof and the license of each thereof shall forthwith upon exclusion as herein provided terminate and revert to the Distributor.

Additional Pictures:

Twentieth: Where any picture is designated in the schedule by the name of a single star or by the name of a single director, such designation shall not refer to, and there shall not be included in this agreement because of such designation, any picture in which such star shall appear with any other star or stars, whether or not such stars are named in the schedule, nor shall there be included in this agreement because of such designation, any picture which may be directed by such director so long as there shall appear in such picture any star or stars.

The Distributor may release, at any time, independently of this agreement, an additional picture or pictures of any star or stars designated in the schedule (but not more than two of such pictures during the period described in Article First hereof) and nothing in this agreement contained

shall be deemed to give the Exhibitor any right to any suc additional picture, but any such additional picture, whe ever released, may be exhibited and/or licensed for exh bition free of any claim thereto by the Exhibitor, witho affecting in any manner the Distributor's obligation furnish, and the Exhibitor's obligation to accept, any a all of the pictures, as described in the schedule.

Cancellation In Event of Default.

Twenty-First: In the event that the Exhibitor shall (a fail or refuse to exhibit or pay the license fee in respe of any picture, (b) fail or refuse to select or designat a date for the exhibition thereof as in Article Sevent hereof provided, (c) refuse to permit the Distributor its authorized representative access to the theatre a its box office for the purpose specified in Article Thir hereof, or (d) otherwise default in its obligations her under, the Distributor, at its election, may consider an such action or failure to act (hereinafter referred to a a default) as a material breach hereof by the Exhibito and may, at its election (1) terminate this agreement wit respect to pictures not theretofore delivered, (2) with hold the delivery of additional pictures until such defau shall be remedied, or (3) if such default shall relate the payment of the license fees in respect of any pictur or pictures, the Distributor may deliver any subsequen picture c.o.d. in an amount sufficient to pay the license fe for such subsequent picture and all previous pictures i respect of which the license fees are delinquent. If th Distributor shall elect to cancel and terminate this agre ment, the grant, if any, of the run or clearance in respe of all pictures licensed hereunder shall stand revoked; th license in respect thereof shall revert to the Distributor and the Distributor may thereafter license to other e hibitors any or all of such pictures.

In the event that the Exhibitor is adjudicated bankru or insolvent, or makes an assignment for the benefit creditors, or in the event that a receiver, liquidator trustee is appointed for the affairs of the Exhibitor, th Distributor, at any time thereafter, may terminate thi agreement in respect of pictures not theretofore delivere to the Exhibitor hereunder by giving the Exhibitor noti in writing of its election so to do.

The election by the Distributor of any remedy hereund

shall not be deemed an election of such remedy in connection with any other default of the Exhibitor nor shall it be deemed as a waiver of any further or additional right or remedy of the Distributor in law or in equity.

Midnight Shows Consecutive Dates.

Twenty-Second: The license herein granted for the number of days specified in the Schedule shall not be deemed to include the right of exhibition at any time during the period prior to six A. M. on the date or first date of exhibition herein provided for, unless this license shall otherwise expressly permit exhibition prior to six A. M. on said date or first exhibition date. Unless this license shall otherwise expressly permit exhibition of each picture on dates which are not consecutive, if the number of dates of exhibitions designated or otherwise agreed upon, as provided herein, are less than the maximum number of days herein specified, this license shall, upon such designation or agreement, be limited to the number of dates so designated or otherwise agreed upon, and in such event the maximum number of days herein specified for any such picture shall be deemed to be reduced accordingly.

Twenty-Third: The following Schedule and all of the written and printed parts thereof are a part of this license (continued on reverse side).

2965 (Stamp) Filed Oct. 11, 1944. Roy H. Johnson, Clerk.

The following is Film License Agreement between Twentieth Century-Fox Film Corporation and Jackson Park Theatre dated November 15, 1940, from Pl. Ex. 23:

2966 Twentieth Century-Fox Film Corporation.

Feature Productions.

(Continued from reverse side)

Executive Offices
444 West 56th St.
New York, N. Y.

Page Two

Exhibitor's Copy

Twenty-first: The following Schedule and all of the written and printed parts thereof are a part of this license.

Date November 15, 1940

Exchange—Chicago

Salesman—H. Loeb

Schedule of Exhibition Contract.

Theatre	Exhibitor	Location of Theatre
Jackson Park	W. C. Bloom	6711 Stony Island Ave., Chicago, Ill.

Season 1940-41 Group K-8

There are licensed for exhibition hereunder all of the sound photoplays of feature length, not to exceed fifty-two (52), and not less than forty-two (42), including a maximum of four (4) photoplays produced in England by Distributor or its wholly owned subsidiary, which shall be generally released by the Distributor for distribution in motion picture theatres of the United States during the year commencing August 1, 1940 and ending July 31, 1941. The "road showing," "tryout," "preview" or "pre-release" of any photoplay during the said year shall not be deemed a general release of said photoplay.

For the license to exhibit each of said photoplays, the Exhibitor shall pay to the Distributor the following:

		Consecutive days run	Minimum guaranteed license fee per photoplay	Distributor's share of gross receipts per photoplay	Gross receipts per photoplay in excess of which distributor shares.
A 10	Pictures to be designated by Distributor.	1/3	$105.00	%	$
B 16	Pictures to be designated by Distributor.	1/3	80.00		
C 16	Pictures to be designated by Distributor.	1/3	60.00		
D	The Remaining Pictures to be designated by Distributor	1/3	45.00		

It Is Understood and Agreed that Exhibitor waives any and all claim to contract eliminations that may have been in vogue, or that may be granted during the life of the contract, except that Exhibitor may eliminate five features from Group "D".

All provisions of the 1940-41 Standard Exhibition Contract are deemed a part of this Agreement, with the exception of clause pertaining to exclusion of photoplays.

Number of Photoplays Offered All

Number of Photoplays Licensed All

It is agreed that the license fees herein specified apply to each respective photoplay licensed hereunder according to the classification thereof by the Distributor, as above provided, and such license fees are not average license fees, regardless of the number of such photoplays that may be released by the Distributor during the year commencing August 1, 1940 and ending July 31, 1941.

It is agreed that in case any photoplay excluded under Exhibitor's "Option to exclude if group licensed" shall have been designated by Distributor to play on percentage terms specified under items A, B, or C in the Schedule hereof, then upon its exclusion such designation shall be deemed to be thereby rescinded and Distributor may designate a different photoplay to play on such specified percentage terms, it being the intent of the parties hereto that Exhibitor shall exhibit hereunder upon the respective percentage terms set forth in said Schedule the number of photoplays specified in said items A, B, and C.

It is further agreed that said option to exclude shall apply only in respect of the photoplays covered by this license agreement.

Of the photoplays hereby licensed the respective number set forth below shall be exhibited on the days specified below:

..... photoplays as selected by Ditributor on.....	..... photoplays as selected by Distributor on.....

The Exhibitor during the whole of the licensed exhibition period of each of the photoplays exhibited hereunder agrees

to and shall charge for admission per person to said theatre the following prices:

After 6:30 P. M. Evenings: Adults, Orchestra 25c; Balcony .....; Children, Orchestra 10c; Balcony .....

To 6:30 P. M. Matinees: Adults, Orchestra 15c; Balcony .....; Children, Orchestra 10c; Balcony .....

If during any such period less than said admission prices is charged, the Distributor in addition to all other rights hereunder shall have the right: (a) to immediately terminate the license of the photoplay then being exhibited, by written notice to such effect to the Exhibitor and upon the giving of such notice, the license of such photoplay shall forthwith terminate and revert to the Distributor; or (b) provided the Exhibitor is granted herein a period of "clearance" to reduce such period by not to exceed one-half in respect to each of the photoplays thereafter deliverable hereunder; or (c) provided no period of clearance is specified in the Schedule to withhold for a period not to exceed sixty (60) days, notice of the date when each photoplay thereafter deliverable hereunder will be available for exhibition by the Exhibitor; and as to each such photoplay the "run" thereof, if any, granted the Exhibitor, shall be deemed revoked and the Exhibitor agrees to exhibit each such photoplay after notice of the available date thereof upon the date or dates determined as provided in Clause Sixth hereof; if Distributor does not elect to terminate the license of the photoplay then being exhibited, as provided in Clause (a) of this paragraph, the Exhibitor shall account for all admissions to said theatre during the exhibition of such photoplay on the basis of the admission prices hereinabove stipulated.

Exhibition Arrangement

Clearance—Run—To play in First Week of Chicago General Release. Same Week as Lexington. Hamilton Theatre not to play before Second Week of Chicago General Release. Starting December 1st, 1940, to play one picture per week as available.

The license herein granted for the number of days specified in the Schedule shall not include the right of exhibition at any time previous to dawn of the first licensed and booked

date of exhibition without securing express written permission hereunder.

If, with respect to any photoplay licensed hereunder, the date or dates of exhibition selected, designated or otherwise agreed upon shall be a number of days less than the maximum number specified in the Schedule hereof, then the license hereby granted for such photoplay shall be automatically limited to the number of days or dates of exhibition (copy from here on is illegible).

The Exhibitor agrees to lease from the Distributor or the Distributor's authorized agent for use only in connection with the exhibition of each of the motion pictures exhibited hereunder and agrees not to sub-lease or sell the following advertising accessories:—

The Exhibitor agrees to run photoplays as delivered without alteration, excepting with the written or telegraphic approval of the Distributor, subject to requirements of duly authorized public authorities necessitating any change. The Exhibitor also agrees to advertise and announce each photoplay as "A Twentieth Century-Fox Production." In all newspaper advertising and publicity issued by the Exhibitor relating to said photoplays the Exhibitor shall adhere to the form of announcement contained in the advertising matter issued by the Distributor.

Short Subject Productions

For the License to Exhibit Each of said Photoplays, the Exhibitor Shall Pay to the Distributor the Following:

Season 1940-41

Productions	Group K-8	Consecutive Days Run Per Photoplay	Guaranteed License Fee Per Photoplay Black & White	Color
52	1-Reel Subjects	1/3	5.00	7.50

Exhibitor may substitute prior feature releases, @ $25.00 each—for these Short Subjects.

Distributor agrees to release a minimum of 52 one-reel pictures, and in the event the Exhibitor contracts hereunder for more than such minimum number of one-reel subjects, Distributor will be obligated to deliver to the Exhibitor only such pictures in addition to such minimum number that it actually releases.

Exhibitor agrees to play the Short Subjects licensed hereunder as available, commencing 11/20/40 and to pay the total license fee of $310.00 in 52 consecutive weekly installments of $5.95 each week starting 11/20/40, and a further payment of 60c for the last week.

Optional Arbitration Clause—Article Twentieth hereof is optional with the parties hereto. If it is desired to make such Clause a part of this license, the Exhibitor and the duly authorized representative of the Distributor shall sign their respective names where indicated immediately following this paragraph and unless so signed the said Clause shall be deemed excluded from this license agreement.

It is agreed by and between the parties that Article Twentieth hereof, providing for voluntary arbitration of disputes arising hereunder, shall be included as a part of this license.

Representative of the Distributor duly authorized to agree to Article Twentieth.

Exhibitor.

In Witness Whereof, the parties hereto have duly executed these presents, this 15th day of November, 1940.

Exhibitor

An Individual.

By (Illegible)

Partner—Officer.

Twentieth Century-Fox Film Corporation
By Arman Wabber

2967 License Agreement.

Agreement of license under copyright made in one or more counterparts between Twentieth Century-Fox Film Corporation, a corporation (hereinafter referred to as the Distributor), party of the first part, and the Exhibitor, (hereinafter named and referred to as the Exhibitor, operating the theatre hereinafter designated), party of the second part.

Witnesseth: The parties hereto agree as follows:

License—First: The Distributor grants the Exhibitor and the Exhibitor accepts a limited license under the respective copyrights of the motion pictures designated and described in the Schedule hereof and under the copyright of any matter included in any sound recorded therewith, to exhibit publicly said motion pictures and to reproduce for public performances such recorded sound in synchronism therewith, but only at the said theatre for the number of consecutive days specified in the Schedule and for no other use or purpose; provided that the reproducing equipment in the said theatre will operate reliably and efficiently to reproduce such recorded sound with adequate volume and high quality; and provided further that if copyrighted musical compositions are included in such recorded sound, the Exhibitor will have at the date or dates of the exhibition of each of such motion pictures a license from the copyright proprietor thereof or from any licensee of such copyright proprietor to perform publicly the said copyrighted musical compositions. If more than one theatre is hereinafter designated the said motion pictures are licensed for exhibition at only one of such theatres unless otherwise in the Schedule specifically provided in writing.

Notwithstanding the number of days of exhibition specified for each motion picture in the Schedule, the license hereby granted to exhibit each such motion picture shall automatically be limited to, and shall not include any right of exhibition at any time or by any means other than respectively: (a) the date or dates either expressly specified herein or selected pursuant to paragraph Sixth hereof and confirmed in writing by the Distributor; and (b) the print of such motion picture designated and furnished by the Distributor for such date or dates.

Term and Warranty—Second: (a) The term of this Agreement shall begin with the date fixed or determined for the exhibition at the said theatre of the first motion picture deliverable hereunder and shall continue for a period of one year thereafter unless otherwise in the Schedule provided. The Distributor agrees during said term to deliver to the Exhibitor, and the Exhibitor agrees to exhibit at said theatre during said term upon the date or dates herein provided for, a positive print of each of said motion pictures except such as may be excluded as provided in Clause Fifteenth and Nineteenth hereof. The Distributor warrants that each positive print will be in good physical condition for projection and exhibition, and will clearly reproduce the recorded sound in synchronism therewith if properly used upon standard reproducing equipment. If the recorded sound is not recorded upon a print, all references herein to a print shall be deemed to include the records, discs and any other device upon which sound may be recorded for reproduction with the exhibition of a print.

Damages—Failure to Deliver—(b) If the Distributor shall fail or refuse to deliver, or the Exhibitor shall fail or refuse to exhibit during the term hereof, any of said motion pictures, excepting those which may be eliminated as provided in Clause Fifteenth hereof, or if the Distributor shall wilfully violate any of the provisions of Clause Seventh hereof or shall deliver to the Exhibitor a print of any motion picture which print shall be determined was not in condition for exhibition and for the reproduction of sound as provided in Clause Second, the Exhibitor or the Distributor, as the case may be, shall pay the damage so caused and if such damage cannot be definitely computed shall pay as liquidated damages a sum equal to the fixed sum herein specified as the rental of each such motion picture or a sum computed as provided in Clause Third (c) hereof, if the rental of any such motion picture is to be determined, either in whole or in part upon a percentage of the admission receipts of said theatre or any part thereof or upon a percentage of such receipts and a fixed sum; provided that any claim by the Exhibitor with respect to the condition of a print shall be deemed to have been waived by the Exhibitor unless notice of such claim shall have been given by the Exhibitor to the Distributor's exchange from which the Exhibitor is served, by telephone

or telegraph, or in person, immediately after the first public exhibition thereof by the Exhibitor and written confirmation thereof mailed by the Exhibitor upon the same day to the Distributor's said exchange.

Payment—Third: Exhibitor agrees to pay for such license as to each such motion picture the fixed sums specified in the Schedule at least three (3) days in advance of the date of delivery of a print thereof at the Distributor's exchange or of the date of shipment to the Exhibitor from another exhibitor, unless after the acceptance of this application by the Distributor such payment shall be otherwise agreed to by the Distributor at its main office in New York City. All payments hereunder shall be made to the Distributor at the City in which is located the exchange from which the Exhibitor is served.

Percentage Bookings—(b) If the rental of any of such motion pictures is to be determined either in whole or in part upon the admission receipts of said theatre or any part thereof, the Exhibitor agrees to pay such rental immediately after the last exhibition upon the last date of the exhibition of each such motion picture or if requested by the Distributor at the end of each day's exhibition. In each such case the Exhibitor shall deliver to the Distributor immediately after the last exhibition upon each date of exhibition of each such motion picture a correct itemized statement of the gross receipts of said theatre for admission thereto upon each such date. Such statement shall be signed by the Exhibitor or the Manager or Treasurer of said theatre and the Cashier thereof and shall include a statement of such facts and figures as may be provided in the Schedule to be furnished by the Exhibitor, and if requested by the Distributor, shall be made upon forms furnished by the Distributor. Upon the exhibition date or dates of each motion picture an authorized representative of the Distributor is hereby given the right to verify the sale of all tickets of admission to said theatre, and the receipts therefrom; and for such purpose shall have access to the theatre, including the box office, and also the right to examine all relevant entries relating to such gross receipts in all the Exhibitor's books and records, and if hereunder it is provided that the Exhibitor make certain expenditures and or deductions, to examine all entries relating to such expenditures and or deductions. Such right of access and examination of the Exhibitor's books

and records limited as aforesaid, shall continue for a period of four (4) months after the receipt by the Distributor of each such statement. The Distributor agrees, unless such representative is in the continuous employ of the Distributor or employed as a checker, not to employ as a representative for such purpose any person a resident of or employed in the place where the said theatre is located, other than a person engaged in business as an accountant. The Distributor agrees that any information obtained pursuant to the provisions of this clause will be treated as confidential, excepting in any arbitration proceeding or litigation in respect to this license.

Liquidated Damages—Percentage Bookings—(c) If the Exhibitor fails or refuses to exhibit any of said motion pictures as herein provided and the rental or any part thereof is to be computed in whole or in part upon a percentage of the admission receipts of said theatre, the Exhibitor shall pay the Distributor as liquidated damages for each day the Exhibitor fails or refuses to exhibit such motion pictures, a sum equal to such percentage of the average daily gross receipts of such theatre on each day any feature motion picture distributed by the Distributor was exhibited thereat during the period of ninety (90) days prior to the date or dates when said motion picture should have been so exhibited hereunder, or if no feature motion picture distributed by the Distributor was exhibited at such theatre during said ninety (90) day period, then a sum equal to such percentage of the average daily gross receipts of such theatre during the period of thirty (30) operating days immediately prior to the date or dates when such motion picture should have been exhibited, or prior to the date of such failure or refusal to exhibit any of said motion pictures; provided that if the Exhibitor shall exhibit such motion pictures for less than the full number of days provided for in the Schedule, for each day less than said full number of days, the sum equal to such percentage shall be computed upon a sum equal to sixty-five percent (65%) of the gross receipts of said theatre during the last day of the exhibition thereat of such motion picture provided, however, that in any event the Distributor shall be entitled to receive an amount equal to the fixed sums specified as the minimum rental therefor. A sworn statement of the said daily gross receipts shall be delivered by the Exhibitor to the Distributor upon demand therefor.

Delivery and Return of Prints—Fourth: (a) After each of said motion pictures is generally released for public exhibition and becomes available for exhibition hereunder by the Exhibitor, the Distributor agrees to deliver as hereinafter provided, a print thereof to the Exhibitor.

(b) The public exhibition of any of said motion pictures for three (3) consecutive days at prices usually charged for admission to the theatre where so exhibited in the territory wherein is located the exchange from which the exhibitor is served, excepting any "road show," "tryout," "preview," or "pre-release" exhibitions thereof, shall be deemed the general release for public exhibition of such motion picture but only in such territory. A "pre-release" exhibition shall be deemed any exhibition because of seasonal conditions making desirable exhibitions in advance of general release as herein defined.

(c) The Exhibitor [illegible]es to exhibit each of said motion pictures in the order of its general release by the Distributor in the exchange territory in which said theatre is located. The Exhibitor shall have the right to select any of the motion pictures; excepting the last deliverable hereunder, for exhibition out of the order of its general release, subject to prior runs and or clearance granted other exhibitors, on the date or dates determined as provided in Article Sixth hereof or otherwise agreed upon, but only upon the following conditions: (a) that the Exhibitor is not in default hereunder and shall have fully complied with all the provisions, if any, set forth in the Schedule for the exhibition of one or more of said motion pictures at specified intervals; and (b) that the Distributor and the Exhibitor shall then agree upon the date or dates upon which all of the motion pictures, generally released prior to the general release of such motion picture and available for exhibition hereunder shall be exhibited by the Exhibitor, which date or dates shall be within thirty (30) days from the first exhibition date of the motion picture to be exhibited out of the order of its general release; or in the alternative the Exhibitor shall then pay to the Distributor the license fee for each of such motion pictures then generally released and available for exhibition hereunder, and as to any thereof which shall not be exhibited by the Exhibitor within thirty days from the first exhibition date of the motion picture to be exhibited out of the order of its general release, the grant of the run and clearance

period in respect thereof shall be deemed waived by the Exhibitor. Upon the failure or refusal of the Exhibitor to exhibit any of such motion pictures, then generally released and available for exhibition hereunder within said thirty day period or to pay the license fee thereof, the right of the Exhibitor to thereafter select for exhibition any motion picture out of the order of its general release shall be forfeited. The provisions of this paragraph (c) shall not be deemed to limit or qualify the provisions of Article Sixth hereof excepting as in this paragraph (c) specifically provided.

(d) The Distributor shall make deliveries hereunder to the Exhibitor or to the Exhibitor's authorized agent, by delivery at the Distributor's exchange, or to a common carrier, or to the United States Postal authorities. If deliveries are made to a carrier or to a post office, they shall be made in time for prints to reach the place where the said theatre is located in time for inspection and a projection thereof before the usual time for opening said theatre.

(e) Exhibitor agrees to return immediately after the last exhibition on the last date of exhibition licensed, each print received hereunder, with its reels and containers, to the exchange of the Distributor from which the Exhibitor is served or as otherwise directed by the Distributor in the same condition as when received, reasonable wear and tear due to proper use excepted. Exhibitor agrees to pay all costs of transportation of such print, reels, and containers from the Distributor's exchange or the last previous exhibitor having possession of the same, and return to the Distributor's exchange or if directed by the Distributor, to ship such positive print elsewhere than to the Distributor's exchange transportation charges collect. It is agreed that the delivery of a positive print properly directed and packed in the container furnished by the Distributor therefor, to a carrier designated or used by the Distributor and proper receipt therefor obtained by the Exhibitor, shall constitute the return of such positive print by the Exhibitor.

(f) If Exhibitor fails to or delays the return of any positive print to the Distributor or fails to forward or delays forwarding (as directed by the Distributor) any such print to any other exhibitor, the Exhibitor agrees to pay the Distributor the damage, if any, so caused the

Distributor and in addition the damage, if any, so caused such other exhibitor. The Exhibitor shall have the right to participate in any compromise of or intervene in any arbitration or legal proceeding based upon any claim for such damage asserted against the Distributor by another exhibitor; notice of which shall be given the Exhibitor by the Distributor.

Loss and Damage, to Prints—Fifth: The Exhibitor shall pay to the Distributor a sum equal to the cost of replacement at the Distributor's exchange for each linear foot of any print, lost, stolen or destroyed or injured in any way in the interval between the delivery to and the return thereof by the Exhibitor in full settlement of all claims for such loss, theft, destruction or injury. Such payment, however, shall not transfer title to or any interest in any such positive print to the Exhibitor or any other party, nor release the Exhibitor from any liability arising out of any breach of this agreement. The Distributor shall at the option of the Exhibitor repay or credit to the Exhibitor any sums paid by the Exhibitor for any lost or stolen print, excepting "news reels," upon the return of such lost or stolen print to the Distributor within sixty (60) days after the date when the same should have been returned hereunder. The Exhibitor shall not be liable for the damage or destruction of any print, provided the Exhibitor establishes such damage or destruction occurred while in transit from the Exhibitor and delivery thereof was made as hereinabove provided. The Exhibitor shall immediately notify the Distributor's exchange by telegram of the loss, theft or destruction of or damage or injury to any print. If any print shall be received from the Exhibitor by the Distributor or any subsequent exhibitor in a damaged or partially destroyed condition it shall be deemed to have been so damaged or destroyed by the Exhibitor unless the latter, immediately after the first public exhibition thereof shall have telegraphed the Distributor's exchange that such print was received by the Exhibitor in a damaged or partially destroyed condition, and setting forth fully the nature of such damage and the amount of footage so damaged or destroyed.

Selection of Play Dates—Sixth: Unless otherwise agreed upon or unless definitely specified or otherwise provided for in the Schedule, the exhibition date or dates of each of said motion pictures shall be determined as follows:

1. Subject to prior runs and/or clearance granted or

hereafter granted by the Distributor to other exhibitors and within a reasonable time after a print or prints of any of said motion pictures are received at the exchange of the Distributor out of which the exhibitor is served, and provided the Exhibitor is not in default hereunder, the Distributor shall mail to the Exhibitor a notice in writing of the date when each such motion picture will be available for exhibition by the Exhibitor (which date is hereinafter referred to as the "available date"). Such notice shall be mailed to the Exhibitor at least fifteen (15) days before the available date therein specified.

2. Within fourteen (14) days after the mailing of such notice, the Exhibitor shall select an exhibition date or dates not theretofore assigned to another exhibitor or other exhibitors, within the period commencing upon the available date and ending thirty (30) days thereafter and give to the Distributor written notice of the date or dates so selected.

3. Upon the failure of the Exhibitor to so select such date or dates the Distributor shall designate such date or dates by mailing written notice thereof to the Exhibitor.

Clearance and Run—Seventh: The Distributor agrees not to exhibit or grant a license to exhibit any of said motion pictures for exhibition in conflict with the "run" or prior to the expiration of the "clearance period" if any in the Schedule specified at any theatre therein named or within the territorial limits therein specified. Such period of clearance as to each of said motion pictures shall be computed from the last date of the exhibition thereof licensed hereunder. If clearance is granted against a named theatre or theatres indicating that it is the intention of the Distributor to grant such clearance against all theatres in the immediate vicinity of the Exhibitor's theatre, then unless otherwise provided in the Schedule, such protection shall include any theatre in such vicinity thereafter erected or opened.

Reissues, Foreign Pictures and Advertising Matter—Eighth: The Distributor warrants that none of said motion pictures are reissues of old negatives, old negative retitled or foreign produced by a foreign producer, excepting those specifically specified as such in the Schedule; and further that none of said motion pictures contains or will contain any advertising matter for which compensation is received by the Distributor, or any subsidiary or affiliate of the Distributor.

Advertising Prior to First Run—Ninth: (a) If the Exhibitor is granted a subsequent run of the said motion pictures the Exhibitor shall not advertise any thereof by any means of advertising prior to or during the exhibition of any one of said motion pictures by any other exhibitor having the right to a prior run thereof. Nothing in this Clause shall be deemed to prohibit the Exhibitor from advertising generally all of said motion pictures as a group but such general advertising shall not refer to any one of said motion pictures during its exhibition by any other exhibitor having the first or immediately prior run thereof, excepting as herein provided.

(b) The Exhibitor shall not advertise by any means of advertising any of said motion pictures which may be road-shown by the Distributor and not excepted and excluded from this license, until after the completion of such road-showing in the United States, and then only as permitted in paragraph (a) of this Clause.

(c) For a breach of the provisions of this Clause the Distributor shall have in addition to all other rights the right to exclude from this license any motion picture advertised in violation of the provisions hereof by written notice to such effect mailed to the Exhibitor and upon the mailing of such notice the license of such motion picture shall terminate and revert to the Distributor, unless arbitration is herein provided for and immediately upon the receipt of any such notice of exclusion the Exhibitor by written notice given to the Distributor shall deny breaching any of the provisions of this Clause, in which case the question of fact raised by such denial shall be determined by arbitration.

Acceptance by Distributor—Tenth: Until accepted in writing by an officer of or any person authorized by the Distributor and notice of acceptance sent to the Exhibitor this instrument shall be deemed only an application for a license under Copyright, and may be withdrawn by the Exhibitor any time before such acceptance. Unless such notice of acceptance is sent the Exhibitor by mail or telegraph within fifteen (15) days after the date thereof, if the said theatre of the Exhibitor is located East of the Mississippi River, and within thirty (30) days after the date thereof, if located West of said river, said application shall be deemed to have been withdrawn. The deposit by the Distributor of any check or other consideration given

by the Exhibitor at the time of application, as payment for any purpose or the delivery of a print of any of said motion pictures shall not be deemed an acceptance hereof by the Distributor.

Changes in Writing—Eleventh: This license agreement is complete and all promises, representations, understandings and agreements in reference thereto have been expressed herein. No change or modification hereof shall be binding upon the Distributor unless in writing signed by an officer of the Distributor, excepting in an emergency and only then, a change or modification may be consented to in writing but only by the representative of the Distributor managing the Distributor's exchange out of which the Exhibitor is served, provided such change or modification does not change or modify the run, and or clearance period, or decrease any rental, or eliminate any motion picture specified in the Schedule.

Assignment on Sale of Theatre—Twelfth: This license shall not be assigned by either party without the written consent of the other, provided, that if the Exhibitor sells the said theatre or transfers any interest therein and is not in default hereunder, and provided the said theatre has not been destroyed by fire, the elements or other casualty, the Exhibitor may assign this license to the purchaser of the theatre or of such interest without the written consent of the Distributor but any such assignment shall not be valid or of any effect hereunder unless a written acceptance thereof by the assignee assuming the obligations of the Exhibitor shall be delivered to the Distributor. Any such assignment shall not release the Exhibitor from any liability hereunder unless such release from liability is consented to by the Distributor in writing, and in the event the Exhibitor is not released from liability then the Exhibitor and the assignee shall be jointly liable for the further performance of the said license agreement.

Taxes—Thirteenth: The Exhibitor shall pay to the Distributor upon demand, any tax, fee or other like charge now and/or hereafter imposed or based upon the delivery and/or the exhibition of prints of motion pictures and/or upon the sums payable under this license by the Exhibitor to the Distributor. If under any statute or ordinance any such tax, fee or other like charge is or shall be payable or paid by the Distributor and the exact amount payable hereunder by the Exhibitor is not therein

definitely fixed, or cannot be exactly determined, then the Exhibitor shall pay such part of any such tax, fee or other like charge paid or payable by the Distributor as shall be fixed in the manner determined by the then President of the American Arbitration Association.

Prevention of Performance—Fourteenth: If the Exhibitor shall be prevented from exhibiting or the Distributor from delivering any of the said motion pictures for causes beyond their control, then this license in respect to each such motion picture shall terminate and revert to the Distributor without liability on the part of either party, provided reasonable written notice of such termination and the cause thereof is given. It is further agreed that if such disability to perform on the part of the Exhibitor continues for a period of four months, Distributor may cancel this contract by sending ten days' notice in writing to that effect any time after the expiration of said four months' period.

Option to Exclude If Group Licensed—Fifteenth: If the total number of feature motion pictures offered to the Exhibitor by the Distributor, at one time, shall have been licensed by the Distributor hereunder, the Exhibitor shall have the right to exclude from this license not to exceed ten (10%) percent of the total number of feature motion pictures so licensed hereunder provided the Exhibitor shall give to the Distributor written notice of the Exhibitor's election to exclude any of said motion pictures within ten (10) days after the mailing by the Distributor of notice of avialability thereof. Upon the exclusion of each feature motion picture the license therefor and all rights thereunder shall terminate and shall revert to the Distributor.

First Run Exhibitions—Sixteenth: (a) If the Exhibitor is granted a first run of the said motion pictures, the Exhibitor shall exhibit each of the feature motion pictures excepting those described in Paragraph (d) of this Clause within the period beginning with the date scheduled and announced by the Distributor for the general release of each feature motion picture in the territory wherein is located the exchange of the Distributor out of which the Exhibitor is served and ending one hundred and twenty (120) days thereafter, notwithstanding any provision of Clause Sixth hereof to the contrary. If the first exhibition date of any of the said motion pictures shall occur on

a date later than ninety (90) days after its scheduled and announced general release date, then the period of clearance of such motion picture shall be reduced so as to expire one hundred and twenty (120) days after said scheduled date of its general release. If the Exhibitor is granted a first run of the said motion pictures and the Exhibitor fails to exhibit any feature motion picture within said period of one hundred and twenty (120) days, the grant of the said first run and the clearance period in respect thereof shall be deemed waived by the Exhibitor and the license fee (several words illegible) become due and payable to the Distributor, with the right to the Exhibitor to exhibit such feature motion picture as hereinafter in Paragraph (e) of this Clause provided.

Second Run Exhibitions—(b) If the Exhibitor is granted a second run of the said motion pictures and any other exhibitor having been granted the first run thereof immediately prior to such second run fails to exhibit any of the feature motion pictures, excepting those described in Paragraph (d) of this Clause within the said period of one hundred and twenty (120) days specified in Paragraph (a) of this Clause, the Exhibitor shall exhibit each such feature motion picture within the period beginning with the date of the expiration of the said one hundred and twenty (120) days period and ending fourteen (14) days thereafter, notwithstanding any provision of Clause Sixth hereof to the contrary. If the Exhibitor is granted a second run of the said motion pictures and the Exhibitor fails to exhibit any feature motion picture within said fourteen (14) days period the grant of such second run and the clearance period if any in respect thereof shall be deemed waived by the Exhibitor and the license fee as to such feature motion picture shall thereupon forthwith become due and payable to the Distributor with the right to the Exhibitor to exhibit such feature motion picture as hereinafter in Paragraph (e) of this Clause provided.

Subsequent Runs Exhibitions—(c) If the Exhibitor is granted a run subsequent to a second run of the said motion pictures and any other Exhibitor having been granted the second run thereof immediately prior to such subsequent run fails to exhibit any of the feature motion pictures, excepting those described in Paragraph (d) of this Clause within the said period of fourteen (14) days specified in Paragraph (b) of this Clause the Exhibitor shall

exhibit each feature motion picture within the period beginning with the date of the expiration of the said fourteen day period and ending seven (7) days thereafter, notwithstanding any provision of Clause Sixth hereof to the contrary. If the Exhibitor is granted a run subsequent to a second run of the said motion pictures and the Exhibitor fails to exhibit any feature motion picture within said seven (7) day period, the grant of such subsequent run and the clearance period if any in respect thereof shall be deemed waived by the Exhibitor and the license fee as to such feature motion picture shall thereupon forthwith become due and payable to the Distributor with the right to the Exhibitor to exhibit such feature motion picture as hereinafter in Paragraph (e) of this Clause provided.

Extended Runs—(d) Any of the motion pictures which shall have been exhibited at any theatre in the said territory for more than one show week prior to the run granted the Exhibitor shall be excepted from the provisions of this Clause and of Paragraph (b) of Clause Fourth.

Exhibition After Revocation of Run and Clearance—(e) Upon the waiver of the grant of the run and or the clearance period of any feature motion picture as provided in Paragraphs (a), (b) or (c) of this Clause, the Exhibitor upon payment of the sum or sums payable hereunder as provided in this Clause for the license to exhibit such feature motion picture, shall have the right to exhibit the same hereunder upon a date or dates not in conflict with any run and or clearance period granted or hereafter granted to other exhibitors, upon written request mailed or delivered to the Distributor within sixty (60) days after the last date upon which such feature motion picture should have been exhibited by the Exhibitor as provided in this Clause. Failing to make such request within said period of sixty (60) days the license to exhibit such feature motion picture granted hereunder shall terminate and revert to the Distributor.

Remedies—Seventeenth: If the Exhibitor shall fail or refuse to pay the rental of any of such motion pictures as provided in this license or to furnish statements of the receipts of said theatre, if any are required hereunder, or to give the Distributor's representative access to the said theatre or its box office and/or the Exhibitor's books and records relative to motion pictures the rentals of which are based upon the said theatre's admission receipts as

herein provided, or if the Exhibitor shall exhibit or permit the exhibition of any of said motion pictures at any time or place other than as herein specified, or if the Exhibitor becomes insolvent or is adjudicated a bankrupt, or executes an assignment for the benefit of his creditors, or if a receiver is appointed for any of the property of the Exhibitor, or if the Exhibitor voluntarily or by operation of law should lose control of the said theatre or of his said interests therein making it impossible for the Exhibitor to exhibit the said motion pictures at the said theatre, then upon the happening of any one or more of said events, the Distributor may at its option, (1) terminate this license agreement, or (2) suspend the delivery of additional motion pictures hereunder until such default or defaults should cease and be remedied. It is agreed that the exercise of any of said remedies by the Distributor shall be in addition to and without prejudice to any right or remedy of the Distributor against the Exhibitor at law or in equity and/or otherwise provided for in this license agreement.

It is agreed, that in the event of the failure or refusal of Exhibitor to exhibit or pay the license fees of any one or more of the photoplays covered by this contract, Distributor may, at its option, declare such failure or refusal a breach of the entire contract, entitling Distributor to recover from Exhibitor as damages therefor, the amount payable as license fees in respect of all photoplays not theretofore exhibited and/or paid for, pursuant to the provisions of this contract.

Cutting or Alteration of Prints—Eighteenth: The Exhibitor shall exhibit each print in its entirety and shall not copy, duplicate, subrent or part with possession of any print. The Exhibitor shall not cut or alter any print, excepting to make necessary repairs thereto, or when required by any duly constituted public official or authority or with the written or telegraphic consent of the Distributor. The Exhibitor however may cut the print of a news reel, and in such case shall completely restore all parts cut therefrom, prior to the return thereof to the Distributor or shipment elsewhere if so directed by the Distributor, in the same condition as received by the Exhibitor.

Roadshows—Nineteenth: (a) The Distributor shall have the right to exhibit and/or cause to be exhibited as a "roadshow," at any time prior to the exhibition thereof hereunder, such of the motion pictures licensed hereunder

as the Distributor may from time to time select and determine, provided, however, that such roadshow exhibitions shall be at theatres at which admission prices for evening performances, during such exhibitions thereof, of not less than one dollar shall be charged for the majority of the orchestra seats, and further provided that, except in the cities of New York and Los Angeles, not more than two of such motion pictures shall be so roadshown.

(b) If and when any such roadshow exhibition shall be in the City of New York and or the City of Los Angeles, and if the Exhibitor's theatre is situated in the territory then served by the Distributor's exchange or exchanges located in New York or Los Angeles, as the case may be, the Distributor shall have the right to except and exclude from this license not to exceed two of such motion pictures so roadshown in each or both of said territories, upon sending to the Exhibitor written notice to such effect not later than four (4) weeks after the commencement of such roadshow exhibition and provided that the Distributor shall by like notice except and exclude such motion picture from all other license agreements containing this Clause and licensing the exhibition of such motion pictures in such territory. The exception and exclusion of any such motion picture in the territory then served by the Distributor's exchange or exchanges located in the City of Los Angeles, or in the City of New York, as the case may be, shall not be deemed to require the Distributor to except and exclude the same motion picture in both of said territories.

(c) If and when any such roadshow exhibition, excepting those in the City of New York and or in the City of Los Angeles, shall be in the territory served by the Distributor's exchange or exchanges serving the Exhibitor's theatre, the Distributor shall have the right to except and exclude from this license not to exceed two of such motion pictures so roadshown upon sending to the Exhibitor written notice to such effect within seven (7) days after the commencement of such roadshow exhibition and provided that the Distributor shall by like notice except and exclude each such motion picture from all other license agreements containing this Clause and licensing the exhibition of such motion picture in such territory.

(d) The inadvertent omission to send to any of such other exhibitors the notice provided for in Paragraphs (a) and (b) of this Clause shall not be deemed to affect the ex-

ception and exclusion from this license of any such motion picture.

(e) The Distributor may so exercise such right to except and exclude any such motion picture from time to time, in the respective territories, as above defined, in the United States. Any motion picture so roadshown in any place in the United States, and not excepted and excluded from this license as aforesaid, shall not be deemed available for exhibition hereunder until after the completion of such roadshowing of such motion picture in the United States and such motion picture shall be exhibited hereunder when generally released by the Distributor and as and when available for exhibition by the Exhibitor, and the term of this license agreement specified in Clause Second shall be in respect to each such motion picture, extended to and including the date or dates of exhibition by the Exhibitor hereunder of each thereof.

(f) For each motion picture that the Distributor shall except and exclude, as aforesaid, the Exhibitor is hereby granted the option to except and exclude from this license (in addition to those which may be excluded as provided in Clause Fifteenth) one of the other motion pictures licensed hereunder, but only if the Exhibitor shall give to the Distributor written notice to such effect not later than fourteen (14) days before the date fixed for the exhibition hereunder of such other motion picture. The Distributor may exhibit and/or license the exhibition of any and all motion pictures excepted and excluded from this license by the Distributor and/or the Exhibitor, as aforesaid, when and where desired by the Distributor, free from all claims of the Exhibitor in respect thereof and the license of each thereof shall forthwith upon exclusion as hereinbefore provided terminate and revert to the Distributor.

Arbitration—Twentieth: Exhibitor and Distributor respectively freely and voluntarily agree that as a condition precedent to the commencement of any action or proceeding in any court by either of them, to determine, enforce or protect the legal rights of either hereunder, each shall submit all claims and controversies arising hereunder for determination by arbitration as follows (hereby expressly waiving the oath of the arbitrators):

Either the Exhibitor or Distributor shall appoint an arbitrator and give written notice of such appointment to the other party. Within five (5) days after the receipt of

such notice of appointment, the other party shall appoint a second arbitrator and give written notice of such appointment to the other arbitrator and to the other party. The two arbitrators so selected shall within three (3) business days thereafter select a third arbitrator, and the three (3) abitrators shall thereupon meet and determine the matter. The hearing of any such controversy shall be in the city wherein is situated the exchange of Distributor from which Exhibitor is served, unless the parties agree in writing that such hearing be had in some other place. The arbitrators appointed hereunder shall proceed forthwith to hear and determine the matter or matters referred to them for determination and the evidence submitted to them, and may require the parties to appear and produce such accounts, documents and witnesses as the arbitrators may require. The arbitrators shall have power to determine such dispute or controversy, to make findings of fact in respect thereof, and to direct specific performance of a contract, and or to determine that the same has been breached in whole or in part, and or that damages on such account shall be paid. The decision or award of a majority of the three (3) arbitrators herein provided for shall be final and binding and conclusive upon the parties hereto. No person shall hear or determine any controversy in which he has an interest direct or indirect, and any person having such interest shall be disqualified to act as an arbitrator. If either party fails or refuses to name the arbitrator to be appointed by such party as herein provided, or if any arbitrator so named shall fail or refuse to act, or be unable or unqualified to serve and another arbitrator qualified and then available to act is not then appointed, another arbitrator may be appointed by the other party hereto. If the arbitrators appointed by or for the respective parties shall fail to agree upon such third arbitrator, such third arbitrator shall be appointed by the President of the American Arbitration Society, who shall be requested to make the selection. The parties hereto further agree to abide by and forthwith comply with any decision and or award of the arbitrators or a majority of them, and consent that any such decision and or award shall be enforceable in or by any court of competent jurisdiction pursuant to the law of such jurisdiction now or hereafter in force.

Each of the parties hereto, without notice to the other,

may apply to any court having jurisdiction to make this agreement to arbitrate a rule or order of such court.

In the event either party neglects or refuses to appoint its arbitrators within five days after the mailing of a notice by the other party requesting such arbitration and appointing its arbitrators, the party requesting such arbitration may deem such action by the other party a refusal to arbitrate such claims and controversies sought to be arbitrated, and in such event may abandon all further arbitration of such claim or controversy sought to be arbitrated, and may then, without further notice, pursue any further remedy, legal, equitable or otherwise, to which said party may be entitled pursuant to this contract.

2968 The following is Film License Agreement between Columbia Pictures Corporation and Jackson Park Theatre dated October 12, 1939, from Pl. Ex. 27:

Filed Oct 11 1944 Roy H. Johnson Clerk.

2969 License Agreement.

3 Exhibitor's Approved Copy

Branch Chicago Date 10/12/39 Contract No. 3569
Salesman's Name F. J. Flaherty
Exhibitor's Name W. C. Bloom

Columbia Pictures Corporation

Twenty-Fifth: The following Schedule and all of the written and printed parts thereof are a part of this license:

Schedule for 1939-40 Season

Theatre	Town and State	Minimum Admission Price Matinee Adults	Matinee Children	Evening Adults	Evening Children	Seating Capacity
Jackson Park	Chicago Illinois	15c	10c	25c	10c	1000

Group C—4-5-6

(A) There are licensed for exhibition hereunder all of the sound photoplays of feature length (exclusive of the so-called Western group of photoplays hereinafter referred to and exclusive of any and all Frank Capra productions) or such or so many of them as may be specified hereunder under the heading "Special Feature Attractions," embraced in the Distributor's group of pictures to be known as "C-4" not less than thirty (30) and not more than forty (40), which shall be generally released by the Distributor for distribution to motion picture theatres in the United States during the period commencing September 1, 1939 and ending September 30, 1940 and embraced in said group "C-4" (except such photoplays as Distributor is required by contract to obtain the consent or approval of the producer or director thereof or other party to the terms and conditions of licensing the exhibition thereof) and identified by designation numbers running from 1001 to 1040. The "road-showing"; "preview" and or "pre-releasing" of any photoplay during the said period above mentioned shall not be deemed a general release of said photoplay.

(B) There are licensed for exhibition hereunder all of the sound photoplays of the so-called Western group of photoplays or such or so many of them as may be specified hereunder under the heading "Western Feature Attractions," embraced in the Distributor's group of pictures to be known as "C-5" not less than eight (8) and not more than sixteen (16), which shall be generally released by the Distributor for distribution to motion picture theatres in the United States, during the period commencing September 1, 1939 and ending September 30, 1940 and embraced in said group known as "C-5" and identified by designation numbers running from 1201-1216.

(C) There are licensed for exhibition hereunder all of the sound one-reel and two-reel motion pictures known as Short Subjects or such or so many of them as may be specified hereunder under the heading "Columbia's Single and Two Reel Attractions," embraced in the Distributor's group of pictures to be known as "C-6," not less than fifty-two (52) and not more than one hundred and four (104) one-reel and not less than thirteen (13) and not more than twenty-six (26) two-reel which shall be generally released

by the Distributor for distribution to motion picture theatres in the United States, during the period commencing September 1, 1939 and ending September 30, 1940 and embraced in said group known as "C-6."

For the license to exhibit each of said photoplays and shorts the Exhibitor shall pay to the Distributor the following:

No. Pic. Bought	Consec. No. Days Run	Incl. Sat. — Sun.	License Fee or Minimum Guaranteed Rental Per Picture	Score Fee Per Day	Special Terms
(A)	—Special Feature Attractions—Group C-4				
1	3-4		100.00	N.C.	
5	3-4		75.00	N.C.	
8	3-4		50.00	N.C.	
6	3-4		40.00	N.C.	
20	3-4		35.00	N.C.	

The Exhibitor agrees to play 30 pictures hereunder. Any right of elimination that the Exhibitor has shall be from those pictures which are designated by the Distributor to play at the lowest rental classification.

(B) —Western Feature Attractions—Group C-5

(C) —Columbia's Single and Two Reel Attractions—Group C-6

	Series	No. Cons. Days	No. Bought	License Fee Per Subject	Total For Series
1500	Color Rhapsodies				
1700	Columbia Phantasies				
1750	Columbia Fables (Specials)				
1600	Fools Who Made History				
1850	Screen Snapshots				
1800	World of Sports				
1550	Columbia Tours				
1900	Washington Parade				
1950	Pals and Pets				

1650	Community Sings
1960	Famous Moments of Comedy
1970	Cinescopes
1400	Stooge 2 Reel Comedies
1420	All Star 2 Reel Comedies

The Exhibitor agrees to pay for the short subjects licensed herein the sum of _____ to be paid on a weekly basis of $_____ per week, for a period of _____ consecutive weeks, starting _____. The weekly sum herein specified to be paid by the Exhibitor shall be so paid irrespective of the number of short subjects which the Exhibitor may play hereunder during any week from among those licensed hereunder.

Designation—It is agreed that the license fees herein specified apply to each respective photoplay and to each respective short subject, licensed hereunder according to the classification thereof by the Distributor, and such license fees are not average license fees regardless of the number of such photoplays or short subjects that may be released by the Distributor, embraced in Group C—4-5-6, within the period hereinabove specified. The Distributor agrees to classify each such photoplay and or short subject at or before the time of the giving to the Exhibitor of the notice of availability of such photoplay or short subject. Nothing in this paragraph contained shall be deemed to prevent the Distributor from exercising its right of re-application contained in the next paragraph hereof.

Re-Application—The Distributor shall have the right to apply the rental terms (including the license fee or minimum guaranteed rental, percentage of gross receipts, minimum playing time and other rental terms specified in the Schedule) of any motion picture to any other motion picture listed in the Schedule, provided, however, that the Distributor shall at no time increase the total number of motion pictures to which the same rental terms apply beyond the total of such motion pictures specified in the Schedule.

In case the Distributor desires to change the rental terms of any motion picture as above provided, the Dis-

tributor shall notify the Exhibitor of the motion picture affected and the terms to be applied to such motion picture, in the notice of availability sent to the Exhibitor relating to such motion picture or prior thereto.

Playing Arrangement: The Exhibitor agrees to play and/or pay for at least ..... special feature attractions (Group C-4) every month and at least ..... western feature attractions (Group C-5) every ..... and at least ..... single reel short subjects every ..... and at least ..... two reel short subjects every ..... commencing the 30th day of December, 1939 ....., if and as available and in order of availability until all motion pictures licensed hereunder are exhibited and/or paid for.

It is agreed that wherever motion pictures hereunder are to be exhibited on a percentage arrangement, said percentage or percentages have been fixed by the Distributor in reliance upon the agreement and representation by the Exhibitor that the policy of the theatre will be a ..... policy. In the event said policy is changed by Exhibitor then the percentage or percentages designated in the Schedule shall be increased by 25% of the original percentage terms unless the Schedule expressly otherwise provides.

Run—Clearance and Additional Provisions

1st week general release. Same week as Lexington on 63rd Street. Woodlawn not to play before 2nd week.

The license herein granted is expressly limited to the right to exhibit each picture at the theatre and for the number of days and on the date or dates of exhibition which shall be selected, designated or otherwise agreed upon and confirmed in writing by the Distributor to the Exhibitor. The exhibition at such theatre and for the number of days and on the dates fixed as aforesaid shall only be by means of a print furnished by Distributor. No right of exhibition except as in this paragraph provided is granted hereunder.

Run: If the Exhibitor is granted hereunder a second or subsequent "run", the Distributor shall have the right in its sole discretion to grant the Exhibitor in respect to any of the motion pictures herein embraced, a "run" prior to such second or subsequent "run" by giving notice in

writing to such effect to the Exhibitor and the Exhibitor agrees to exhibit any such motion picture in accordance therewith.

End of Schedule

In Witness Whereof, W. C. Bloom, the Exhibitor operating the Jackson Park Theatre, located at No. 6714 Stony Island Street, City of Chicago, State of Illinois, has on 10/12/39 executed this application, which upon written acceptance by the Distributor when countersigned and approved in the space to the left provided provided below shall be deemed to be the license to the Exhibitor for the exhibition of the motion pictures specified in the Schedule at said theatre in accordance with the terms hereof.

W. C. Bloom

..... L. S.

Exhibitor

By (illegible)
Partner General Manager Officer
Individual (Strike out three)

Columbia Pictures Corporation

Salesman Manager

Countersigned and Approved (Date) Oct. 18, 1939.

Columbia Pictures Corporation
By (illegible)
General Sales Manager

Direction To Salesmen: While you have every right to trade among prospective customers to obtain the best offer possible for your product, after you have selected a particular exhibitor whose offer you believe to be the best obtainable and take a written application from such exhibitor, you are hereby directed to forward the application to the office of your company and make no further effort to sell the same service to any other exhibitor directly competing with such exhibitor until the application so forwarded has been duly rejected, or accepted or withdrawn in accordance with its terms. A violation of this direction will subject you to discharge.

License Agreement

Agreement of license under copyright made in one or more counterparts between Columbia Pictures Corportion a corporation (hereinafter referred to as the Distributor), party of the first part, and the Exhibitor (hereinafter named and referred to as the Exhibitor, operating the theatre hereinafter designated), party of the second part, as follows:—

License.

First: The Distributor grants the Exhibitor and the Exhibitor accepts, a limited license under the respective copyrights of the motion pictures embraced in the Schedule, Article Twenty-fifth on the reverse side hereof and under the copyright of any matter included in any sound recorded therewith, to exhibit publicly said motion pictures and to reproduce for public performances such recorded sound in synchronism therewith, but only at the said theatre for the number of consecutive days specified in said Schedule and for no other use or purpose; provided that the reproducing equipment in the said theatre will operate reliably and efficiently to reproduce such recorded sound with adequate volume and high quality; and provided further that if copyrighted musical compositions are included in such recorded sound, the Exhibitor will have at the date or dates of the exhibition of each such motion picture a license from the copyright proprietor thereof or from any licensee of such copyright proprietor to perform publicly the said copyrighted musical compositions. If more than one theatre is hereinafter designated the said motion pictures are licensed for exhibition at only one of such theatres unless otherwise in the Schedule specifically provided in writing.

Term and Warranty.

Second: (a) The term of this Agreement shall begin with the date fixed or determined for the exhibition at the said theatre of the first motion picture deliverable hereunder and shall continue for a period of one year thereafter unless otherwise in the Schedule provided. The Distributor agrees during said term to deliver to the Exhibitor, and the Exhibitor agrees to exhibit at said theatre during said term upon the date or dates herein provided for, a

positive print of each of said motion pictures. The Distributor warrants that each positive print will be in good physical condition for projection and exhibition, and will clearly reproduce the recorded sound in synchronism therewith if properly used upon standard reproducing equipment. If the recorded sound is not recorded upon a print, all references herein to a print shall be deemed to include the records, discs and any other device upon which sound may be recorded for reproduction with the exhibition of a print.

Damages Failure to Deliver.

(b) If the Distributor shall fail or refuse to deliver, or the Exhibitor shall fail or refuse to exhibit any of said motion pictures, upon the confirmed date or dates therefor, or if the Distributor shall wilfully violate any of the provisions of Subdivision (a) above relating to the physical condition of the positive prints to be delivered, or any of the provisions of Clause Seventh hereof, the Exhibitor or the Distributor, as the case may be, shall pay the damage so caused (which shall be limited in amount however to a sum not in excess of the amount fixed or determinable as liquidated damages, as hereinafter provided) and if such damage cannot be definitely computed shall pay as liquidated damages a sum equal to the fixed sum herein specified as the rentals of the said motion pictures or a sum computed as provided in Clause Third (c) hereof, if the rentals of the said motion pictures are to be determined either in whole or in part upon a percentage of the admission receipts, or any part thereof, of said theatre, or upon a percentage of such receipts and a fixed sum; provided that any claim by the Exhibitor with respect to the condition of a print shall be deemed to have been waived by the Exhibitor unless notice of such claim shall have been given by the Exhibitor to the Distributor's exchange from which the Exhibitor is served, by telephone or telegraph or in person, immediately after the first public exhibition thereof by the Exhibitor and written confirmation thereof mailed by the Exhibitor upon the same day to the Distributor's said exchange.

Payment.

Third: (a) Exhibitor agrees to pay for such license as to each such motion picture the fixed sums specified in the Schedule at least three (3) days in advance of the date

of delivery of a print thereof at the Distributor's exchange or of the date of shipment to the Exhibitor from another exhibitor, unless after the acceptance of this application by the Distributor payment thereof shall be otherwise agreed to by the Distributor in writing signed by an officer of the Distributor. All payments hereunder shall be made to the Distributor at the City in which is located the exchange from which the Exhibitor is served.

Percentage Bookings.

(b) If the rental of any of such motion pictures is to be determined either in whole or in part upon the admission receipts of said theatre or any part thereof, the Exhibitor agrees to pay such rental immediately after the last exhibition upon the last date of the exhibition of each such motion picture or if requested by the Distributor at the end of each day's exhibition. In each such case the Exhibitor shall deliver to the Distributor immediately after the last exhibition upon each date of exhibition of each such motion picture a correct itemized statement of the gross receipts of said theatre for admission thereto upon each such date. Such statement shall be signed by the Exhibitor or the Manager or Treasurer of said theatre and the Cashier thereof and shall include a statement of such facts and figures as may be provided in the Schedule to be furnished by the Exhibitor, and if requested by the Distributor, shall be made upon forms furnished by the Distributor. Upon the exhibit date or dates of each motion picture an authorized representative of the Distributor is hereby given the right to verify the sale of all tickets of admission to said theatre, and the receipts therefrom; and for such purpose shall have access to the theatre, including the box office, and also the right to examine all relevant entries relating to such gross receipts in all the Exhibitor's books and records, and if hereunder it is provided that the Exhibitor makes certain expenditures and or deductions, o examine all entries relating to such expenditures and or deductions. Such right of access and examination of the Exhibitor's books and records limited as aforesaid, shall continue for a period of four (4) months after the receipt by the Distributor of each such statement. The Distributor agrees, unless such representative is in the continuous employ of the Distributor or employed as a checker, not to employ as a representative for such pur-

pose any person a resident of or employed in the place where the said theatre is located, other than a person engaged in business as an accountant.

Liquidated Damages—Percentage Bookings

(c) If the exhibitor fails or refuses to exhibit any of said motion pictures as herein provided and if the damage so caused cannot be definitely computed and the rental or any part thereof is to be computed in whole or in part upon a percentage of the admission receipts or any part thereof of said theatre, the Exhibitor shall pay the Distributor as liquidated damages for each day the Exhibitor fails or refuses to exhibit such motion pictures, in addition to any fixed sums payable hereunder in respect of such motion picture, a sum equal to such percentage of the average daily gross receipts of such theatre on each date any feature motion picture distributed by the Distributor was exhibited thereat during the period of ninety (90) days prior to the date or dates when said motion picture should have been so exhibited hereunder, or if no feature motion picture distributed by the Distributor was exhibited at such theatre during said ninety day period, then a sum equal to such percentage of the average daily gross receipts of such theatre during the period of thirty operating days immediately prior to the date or dates when such motion pictures should have been exhibited, or prior to the date of such failure or refusal to exhibit any of said motion pictures; provided that if the Exhibitor shall exhibit such motion pictures for less than the full number of days provided for in the Schedule, for each day less than said full number of days, the sum equal to such percentage shall be computed upon a sum equal to sixty-five (65%) per cent of the gross receipts of said theatre during the last day of the exhibition thereat of such motion picture. A sworn statement of the said daily gross receipts shall be delivered by the Exhibitor to the Distributor upon demand therefor.

(d) If the rental of any such motion pictures is to be determined upon the admission receipts but with a minimum guaranteed rental, then the Exhibitor agrees to pay such minimum guaranteed rental in accordance with the provision of Sub-division (a) hereof. Any additional monies to be paid to Distributor as a percentage of the admission receipts shall be paid by the Exhibitor to Distributor in accordance with Sub-division (b) hereof.

Delivery and Return of Prints

Fourth: (a) After each of said motion pictures is generally released for public exhibition and becomes available for exhibition hereunder by the Exhibitor, the Distributor agrees to deliver as hereinafter provided, a print thereof to the Exhibitor.

(b) The public exhibition of any of said motion pictures for three (3) consecutive days at prices usually charged for admission to the theatre where so exhibited in the territory wherein is located the exchange from which the Exhibitor is served, excepting any "road show," "try-out," "preview," or "pre-release" exhibition thereof, shall be deemed the general release for public exhibition of such motion picture, but only in such territory. A "pre-release" exhibition shall be deemed any exhibition because of seasonal conditions making desirable in Distributor's sole discretion, exhibition in advance of general release as herein defined.

(c) The Exhibitor agrees to exhibit each of said motion pictures in the order of its general release by the Distributor in the exchange territory in which said theatre is located. The Exhibitor shall have the right to select any of the motion pictures, excepting the last deliverable hereunder, for exhibition out of the order of its general release, subject to prior runs and or clearance granted other exhibitors, on the date or dates determined as provided in Article Sixth hereof or otherwise agreed upon, but only upon the following conditions (a) that the Exhibitor is not in default hereunder and shall have fully complied with all the provisions, if any, set forth in the Schedule for the exhibition of one or more of said motion pictures at specified intervals; and (b) that the Distributor and the Exhibitor shall then agree upon the date or dates upon which all of the motion pictures generally released prior to the general release of such motion picture and available for exhibition hereunder shall be exhibited by the Exhibitor, which date or dates shall be within thirty (30) days from the first exhibition date of the motion picture to be exhibited out of the order of its general release; or in the alternative the Exhibitor shall then pay to the Distributor the license fee for each of such motion pictures then generally released and available for exhibition hereunder, and as to any thereof which shall not be exhibited by the Exhibitor within thirty days from the first exhibition date

of the motion picture to be exhibited out of the order of its general release, the grant of the run and clearance period in respect thereof shall be deemed waived by the Exhibitor. Upon the failure or refusal of the Exhibitor to exhibit any of such motion pictures then generally released and available for exhibition hereunder within said thirty day period or to pay the license fee thereof, the right of the Exhibitor to thereafter select for exhibition any motion picture out of the order of its general release shall be forfeited. The provisions of this paragraph (c) shall not be deemed to limit or qualify the provisions of Article Sixth hereof exceptiñg as in this paragraph (c) specifically provided.

(d) The Distributor shall make deliveries hereunder to the Exhibitor or to the Exhibitor's authorized agent by delivery at the Distributor's exchange, or to a common carrier, or to the United States Postal authorities. If deliveries are made to a carrier or to a post office, they shall be made in time for prints to reach the place where the said theatre is located in time for inspection and a projection thereof before the usual time for opening said theatre.

(e) Exhibitor agrees to return immediately after the last exhibition on the last date of exhibition licensed, each print received hereunder, with its reels and containers, to the exchange of the Distributor from which the Exhibitor is served or as otherwise directed by the Distributor in the same condition as when received, reasonable wear and tear due to proper use excepted. Exhibitor agrees to pay all costs of transportation of such prints, reels, and containers from the Distributor's exchange or the last previous exhibitor having possession of the same, and return to the Distributor's exchange; or if directed by the Distributor, to ship such positive prints elsewhere than to the Distributor's exchange, transportation charges collect. It is agreed that the delivery of a positive print properly directed and packed in the container furnished by the Distributor therefor, to a carrier designated or used by the Distributor and proper receipt therefor obtained by the Exhibitor, shall constitute the return of such positive print by the Exhibitor.

(f) If Exhibitor fails to or delays the return of any positive print to the Distributor or fails to forward or delays forwarding (as directed by the Distributor) any

such print to any other exhibitor, the Exhibitor agrees to pay the Distributor the damage, if any, so caused the Distributor and in addition the damage, if any, so caused such other exhibitor.

Loss and Damage to Prints

Fifth: The Exhibitor shall pay to the Distributor a sum equal to the cost of replacement at the Distributor's exchange for each linear foot of any print, lost, stolen or destroyed or injured in any way in the interval between the delivery to and the return thereof by the Exhibitor in full settlement of all claims for such loss, theft, destruction or injury. Such payment, however, shall not transfer title to or any interest in any such positive print to the Exhibitor or any other party, nor release the Exhibitor from any liability arising out of any breach of this agreement. The Distributor shall at the option of the Exhibitor repay or credit to the Exhibitor any sums paid by the Exhibitor for any lost or stolen print, upon the return of such lost or stolen print to the Distributor within sixty (60) days after the date when the same should been returned hereunder. The Exhibitor shall not be liable for the damage or destruction of any print, provided the Exhibitor establishes such damage or destruction occurred while in transit from the Exhibitor and delivery thereof was made as hereinabove provided. The Exhibitor shall immediately notify the Distributor's exchange by telegram of the loss, theft or destruction of, or damage or injury to any print. If any print shall be received from the Exhibitor by the Distributor or any subsequent exhibitor in a damaged or partially destroyed condition it shall be deemed to have been so damaged or destroyed by the Exhibitor unless the latter, immediately after the first public exhibition thereof shall have telegraphed the Distributor's exchange that such print was received by the Exhibitor in a damaged or partially destroyed condition, and setting forth fully the nature of such damage and the amount of footage so damaged or destroyed.

Selection of Playdates

Sixth: Unless definitely specified or otherwise provided for in the Schedule, the exhibition date or dates of each of said motion pictures shall be determined as follows:

1. Subject to prior runs and/or clearance granted or

hereafter granted by the Distributor to other exhibitors and within a reasonable time after a print or prints of any of said motion pictures are received at the exchange of the Distributor out of which the Exhibitor is served, and provided the Exhibitor is not in default hereunder, the Distributor shall mail to the Exhibitor a notice in writing of the date when each such motion picture will be available for exhibition by the Exhibitor (which date is hereinafter referred to as the "available date"). Such notice shall be mailed to the Exhibitor at least fifteen (15) days before the available date therein specified.

2. Within fourteen (14) days after the mailing of such notice, the Exhibitor shall select an exhibition date or dates not theretofore assigned to another exhibitor or other exhibitors, within the period commencing upon the available date and ending thirty (30) days thereafter and give to the Distributor written notice of the date or dates so selected.

3. Upon the failure of the Exhibitor to so select such date or dates the Distributor shall designate such date or dates by mailing written notice thereof to the Exhibitor.

Clearance and Run

Seventh: The Distributor agrees not to exhibit or grant a license to exhibit any of said motion pictures for exhibition in conflict with the "run" or prior to the expiration of the "clearance period" if any in the Schedule specified at any theatre therein named or within the territorial limits therein specified. Such period of clearance as to each of said motion pictures shall be computed from the last date of the exhibition thereof licensed hereunder. If clearance is granted against a named theatre or theatres indicating that it is the intention of the Distributor to grant such clearance against all theatres in the immediate vicinity of the Exhibitor's theatre then unless otherwise provided in the Schedule, such clearance shall include any theatre in such vicinity thereafter erected or opened.

Eighth: The Distributor warrants that none of said motion pictures are reissues of old negatives, or old negatives retitled excepting those specifically specified as such in the Schedule.

Description of Pictures

Ninth: (a) If the Exhibitor is granted a subsequent run of the said motion pictures, the Exhibitor shall not advertise any thereof by any means of advertising prior to or during the exhibition of any one of said motion pictures by any other exhibitor having the right to a prior run thereof. Nothing in this Clause shall be deemed to prohibit the Exhibitor from advertising generally all of said motion pictures as a group, but such general advertising shall not refer to any one of said motion pictures during its exhibition by any other exhibitor having the first or immediately prior run thereof, excepting as herein provided.

(b) The Exhibitor shall not advertise by any means of advertising any of said motion pictures which may be roadshown by the Distributor and not excepted and excluded from this license, until after the completion of such roadshowing in the United States, and then only as permitted in paragraph (a) of this Clause.

(c) For a breach of the provisions of this Clause the Distributor shall have in addition to all other rights the right to exclude from this license any motion picture advertised in violation of the provisions hereof by written notice to such effect mailed to the Exhibitor and upon the mailing of such notice the license of such motion picture shall terminate and revert to the Distributor but without prejudice to any and all rights Distributor may have against Exhibitor on account of such breach.

Advertising Prior to First Run

Tenth: Until accepted in writing by an officer of or any person authorized by the Distributor and notice of acceptance sent to the Exhibitor this instrument shall be deemed only an application for a license under Copyright, and may be withdrawn by the Exhibitor any time before such acceptance. Unless such notice of acceptance is sent the Exhibitor by mail or telegraph within fifteen (15) days after the date thereof, if the said theatre of the Exhibitor is located East of the Mississippi River and within thirty (30) days after the date thereof if located West of said river, said application shall be deemed to have been withdrawn. The deposit by the Distributor of any check or other consideration given by the Exhibitor at the time of applica-

tion as payment for any purpose or the delivery of a print or prints of one or more of said motion pictures shall not be deemed an acceptance hereof by the Distributor.

Acceptance by Distributor

Eleventh: This license agreement is complete and all promises, representations, understandings and agreements in reference thereto have been expressed herein. No change or modification hereof shall be binding upon the Distributor unless in writing signed by an officer of the Distributor, excepting in an emergency and only then, a change or modification may be consented to in writing, but only by the representative of the Distributor managing the Distributor's exchange out of which the Exhibitor is served, provided such change or modification does not change or modify the run, and/or clearance period or decrease any rental or eliminate any motion picture specified in the Schedule.

Changes in Writing

Twelfth: In the event the Exhibitor sells said theatre or transfers any interest therein and is not in default hereunder, the Exhibitor shall have the right to assign this license to the Purchaser of the theatre or of such interest without the written consent of the Distributor provided the Exhibitor or such assignee shall deliver to the Distributor, in form acceptable to Distributor, a written assumption of all the obligations of the Exhibitor hereunder duly executed by the assignee. Any such assignment, however, shall not release the Exhibitor from any liability hereunder unless such release from liability is consented to by the Distributor in writing.

Assignment of Contract

Except as herein provided, the Exhibitor shall have no right to assign this agreement. The Exhibitor agrees that Distributor shall have the right to assign this agreement to any person, firm or corporation without the written consent of the Exhibitor.

Thirteenth: The Exhibitor shall pay to the Distributor upon demand a tax fee or any other charge, now and or hereafter levied, imposed or based upon the delivery and or the exhibition of prints of motion pictures and or upon the sums payable under this license by the Exhibitor to

Distributor and or the rental of the rights herein granted by Distributor to Exhibitor hereunder and or any other reason whatsoever. In the event the Exhibitor fails or refuses to pay upon demand such tax fee or charge, then the Distributor shall have the right at its option to C.O.D. delivery of any print of the motion pictures licensed hereunder and include the amount of such tax fee or other charge in said C.O.D.

Taxes

In the event such tax shall be declared invalid by final judicial decree, the Distributor shall not be liable to the Exhibitor for the return of such taxes, fees or other charges paid by Exhibitor to the Distributor if the Distributor shall have paid same over to the governmental agency designated to receive or collect same. If such taxes, fees or other charges shall not have been paid over to such governmental agency and said tax shall be declared invalid by final judicial decree, then the Distributor agrees to return to Exhibitor such sum or sums as Distributor shall have received from Exhibitor but not paid over to such governmental agency.

Prevention of Performance

Fourteenth: If the Exhibitor shall be prevented from exhibiting or the Distributor from delivering any of the said motion pictures for causes beyond their direct control then this license in respect to each such motion picture shall terminate and revert to the Distributor without liability on the part of either party, provided reasonable written notice of such termination and the cause thereof is given.

First Run Exhibitions

Fifteenth: (a) If the Exhibitor is granted a first run of the said motion pictures, the Exhibitor shall exhibit each of the feature motion pictures excepting those described in Paragraph (d) of this Clause within the period beginning with the date scheduled and announced by the Distributor for the general release of each feature motion picture in the territory wherein is located the exchange of the Distributor out of which the Exhibitor is served and ending one hundred and twenty (120) days thereafter, notwithstanding any provision of Clause Sixth hereof to the

contrary. If the first exhibition date of any of the said motion pictures shall occur on a date later than ninety (90) days after its officially announced general release date, then the period of clearance of such motion picture shall be reduced so as to expire one hundred and twenty (120) days after said scheduled date of its general release. If the Exhibitor is granted a first run of the said motion pictures and the Exhibitor fails to exhibit any feature motion picture within said period of one hundred and twenty (120) days, the grant of the said first run and the clearance period in respect thereof shall be deemed waived by the Exhibitor and the license fee as to such feature motion picture shall thereupon forthwith become due and payable to the Distributor, with the right to the Exhibitor to exhibit such feature motion picture as hereinafter in Paragraph (e) of this Clause provided.

Second Run Exhibitions

(b) If the Exhibitor is granted a second run of the said motion pictures and any other exhibitor having been granted the first run thereof immediately prior to such second run fails to exhibit any of the feature motion pictures, excepting those described in Paragraph (d) of this Clause within the said period of one hundred and twenty (120) days specified in Paragraph (a) of this Clause, the Exhibitor shall exhibit each such feature motion picture within the period beginning with the date of the expiration of the said one hundred and twenty (120) days period and ending fourteen (14) days thereafter, notwithstanding any provisions of Clause Sixth hereof to the contrary. If the Exhibitor is granted a second run of the said motion pictures and the Exhibitor fails to exhibit any feature motion picture within said fourteen (14) days period the grant of such second run and the clearance period if any in respect thereof shall be deemed waived by the Exhibitor and the license fee as to such feature motion picture shall thereupon forthwith become due and payable to the Distributor with the right to the Exhibitor to exhibit such feature motion picture as hereinafter in paragraph (e) of this Clause provided.

Subsequent Runs Exhibitions

(c) If the Exhibitor is granted a run subsequent to a second run of the said motion pictures and any other Ex-

hibitor having been granted the second run thereof immediately prior to such subsequent run fails to exhibit any of the feature motion pictures, excepting those described in Paragraph (d) of this Clause within the said period of fourteen (14) days specified in Paragraph (b) of this Clause the Exhibitor shall exhibit each feature motion picture within the period beginning with the date of the expiration of the said fourteen day period and ending seven (7) days thereafter, notwithstanding any provision of Clause Sixth hereof to the contrary. If the Exhibitor is granted a run subsequent to a second run of the said motion pictures and the Exhibitor fails to exhibit any feature motion picture within said seven (7) day period, the grant of such subsequent run and the clearance period if any in respect thereof shall be deemed waived by the Exhibitor and the license fee as to such feature motion picture shall thereupon forthwith become due and payable to the Distributor with the right to the Exhibitor to exhibit such feature motion picture as hereinafter in Paragraph (e) of this Clause provided.

Extended Runs

(d) Any of the motion pictures which shall have been exhibited at any theatre in the said territory for more than one show week prior to the run granted the Exhibitor shall be excepted from the provisions of this Clause and of Paragraph (b) of Clause Fourth.

Exhibition After Revocation of Run and Clearance

(e) Upon the waiver of the grant of the run and or the clearance period of any feature motion picture as provided in Paragraph (a), (b) or (c) of this Clause, the Exhibitor upon payment of the sum or sums payable hereunder as provided in this Clause for the license to exhibit such feature motion picture, shall have the right to exhibit the same hereunder upon a date or dates not in conflict with any run and or clearance period granted or hereafter granted to other exhibitors, upon written request mailed or delivered to the Distributor within sixty (60) days after the the last date upon which such feature motion picture should have been exhibited by the Exhibitor as provided in this Clause. Failing to make such request within said period of sixty (60) days the license to exhibit such feature motion picture granted hereunder shall terminate and revert to the Distributor.

Remedies

Sixteenth: If the Exhibitor shall fail or refuse to pay the rental of any of such motion pictures as provided in this license or to furnish statements of the receipts of said theatre, if any are required hereunder, or to give the Distributor's representative access to the said theatre or its box office and or the Exhibitor's books and records relative to motion pictures the rentals of which are based upon the said theatre's admission receipts as herein provided, or if the Exhibitor shall exhibit or permit the exhibition of any of said motion pictures at any time or place other than as herein specified, or if the Exhibitor becomes insolvent or is adjudicated a bankrupt, or executes an assignment for the benefit of his creditors, or if a receiver is appointed for any of the property of the Exhibitor, or if the Exhibitor voluntarily or by operation of law should lose control of the said theatre or of his said interests therein, making it impossible for the Exhibitor to exhibit the said motion pictures at the said theatre, then upon the happening of any one or more of said events, the Distributor may at its option, (1) terminate this license agreement, or (2) suspend the delivery of additional motion pictures hereunder until such default or defaults should cease and be remedied. It is agreed that the exercise of any of said remedies by the Distributor shall lie in addition to and without prejudice to any right or remedy of the Distributor against the Exhibitor at law or in equity and or otherwise provided for in this license agreement.

Cutting or Alteration of Prints

Seventeenth: The Exhibitor shall exhibit each print in its entirety and shall not copy, duplicate, subrent or part with possession of any print. The Exhibitor shall not cut or alter any print, excepting to make necessary repairs thereto, or when required by any duly constituted public official or authority or with the written or telegraphic consent of the Distributor.

Eighteenth: (a) The Distributor shall have the right to exhibit and or cause to be exhibited as a "roadshow," at any time prior to the exhibition thereof hereunder, such of the motion pictures licensed hereunder as the Distributor may from time to time select and determine, provided, however, that such roadshow exhibitions shall be at the-

atres at which admission prices for evening performances, during such exhibitions thereof, of not less than one dollar shall be charged for the majority of the orchestra seats, and further provided that, except in the cities of New York and Los Angeles, not more than two of such motion pictures shall be so roadshown.

Roadshows

(b) If and when any such roadshow exhibition shall be in the City of New York and or the City of Los Angeles, and if the Exhibitor's theatre is situated in the territory then served by the Distributor's exchange or exchanges located in New York or in Los Angeles, as the case may be, the Distributor shall have the right to except and exclude from this license not to exceed two of such motion pictures so roadshown in each or both of said territories, upon sending to the Exhibitor written notice to such effect not later than four (4) weeks after the commencement of such roadshow exhibition and provided that the Distributor shall by like notice except and exclude such motion picture from all other license agreements containing this Clause and licensing the exhibition of such motion picture in such territory. The exception and exclusion of any such motion picture in the territory then served by the Distributor's exchange or exchanges located in the City of Los Angeles, or in the City of New York, as the case may be, shall not be deemed to require the Distributor to except and exclude the same motion picture in both of said territories.

(c) If and when any such roadshow exhibition, excepting those in the City of New York and or in the City of Los Angeles, shall be in the territory served by the Distributor's exchange or exchanges serving the Exhibitor's theatre, the Distributor shall have the right to except and exclude from this license not to exceed two of such motion pictures so roadshown upon sending to the Exhibitor written notice to such effect within fourteen (14) days after the commencement of such roadshow exhibition and provided that the Distributor shall by like notice except and exclude each such motion picture from all other license agreements containing this Clause and licensing the exhibition of such motion picture in such territory.

(d) The inadvertent omission to send to any of such other exhibitors the notice provided for in Paragraph (b)

and (c) of this Clause shall not be deemed to affect the exception and exclusion from this license of any such motion picture.

(e) The Distributor may so exercise such right to except and exclude any such motion picture from time to time, in the respective territories, as above defined, in the United States. Any motion picture so roadshown in any place in the United States, and not excepted and excluded from this license as aforesaid, shall not be deemed available for exhibition hereunder until after the completion of such roadshowing of such motion picture in the United States, and such motion picture shall be exhibited hereunder when generally released by the Distributor and as and when available for exhibition by the Exhibitor, and the term of this license agreement specified in Clause Second shall be in respect to each such motion picture, extended to and including the date or dates of exhibition by the Exhibitor hereunder of each thereof.

(f) For each motion picture that the Distributor shall except and exclude, as aforesaid, the Exhibitor is hereby granted the option to except and exclude from this license one of the other motion pictures licensed hereunder, but only if the Exhibitor shall give to the Distributor written notice to such effect not later than fourteen days before the date fixed for the exhibition hereunder of such other motion picture. The Distributor may exhibit and or license the exhibition of any and all motion pictures excepted and excluded from this license by the Distributor and or the Exhibitor, as aforesaid, when and where desired by the Distributor, free from all claims of the Exhibitor in respect thereof and the license of each thereof shall forthwith upon exclusion hereinbefore provided terminate and revert to the Distributor.

Nineteenth: The license herein granted for the number of days specified in the Schedule shall not include the right of exhibition at any time previous to dawn of the first licensed and booked date of exhibition without securing express written permission hereunder.

Midnight Shows

Twentieth: The Exhibitor during the whole of the licensed exhibition period of each of the motion pictures exhibited hereunder agrees to and shall charge for admission to said theatre the prices listed in the Schedule.

Admission Prices

If during any such period less than said admission prices listed in the Schedule is charged, the Distributor in addition to all other rights hereunder shall have the right (a) to immediately terminate the license of the motion picture then being exhibited, by written notice to such effect to the Exhibitor and upon the giving of such notice, the license of such motion picture shall forthwith terminate and revert to the Distributor; or (b) provided the Exhibitor is granted herein a period of "Clearance" to reduce such period by not to exceed one-half in respect to each of the motion pictures thereafter deliverable hereunder; or (c) provided no period of "Clearance" is specified in the Schedule to withhold for a period not to exceed sixty (60) days notice of the date when each motion picture thereafter deliverable hereunder will be available for exhibition by the Exhibitor; and as to each such motion picture the "run" thereof, if any, granted the Exhibitor, shall be deemed revoked and the Exhibitor agrees to exhibit each such motion picture after notice of the available date thereof upon the date or dates determined as provided in Clause Sixth hereof.

Breach of Other Agreements

Twenty-First: If the Exhibitor shall breach any other agreement between the Exhibitor and Distributor made prior to, simultaneously with or subsequent to the making of this agreement, then any such breach under such agreement shall be deemed to be a breach and a default under this agreement and in any such case the Distributor shall have all the rights and remedies herein provided as well as those at Law, in Equity or otherwise, to the same full force and to the same extent as if such breach had been committed hereunder.

Right to C.O.D.

Twenty-Second: It is agreed that the Distributor may at its option deliver to the Exhibitor C.O.D. any motion picture deliverable hereunder and may add to said C.O.D. the amount of any past indebtedness owing under this or any other agreement by the Exhibitor to the Distributor. Such indebtedness may include monies due from the Exhibitor to the Distributor for unplayed pictures, played pictures or for any other indebtedness whatsoever.

Monies in Trust

Twenty-Third: Where this agreement calls for the payment of a fixed and definite rental for any motion picture (that is to say, not based upon a percentage of the gross receipts) then in case payment is not made in advance of the exhibition of any such motion picture and credit is extended to the Exhibitor, in consideration therefor, the Exhibitor agrees that the Distributor shall receive its rental for any such motion picture with respect to which credit has been so extended, out of the first admission receipts from the patrons paying admission during the exhibition of any such motion picture up to the amount due the Distributor and such admission receipts shall belong to and be the property of the Distributor when they are paid by the patrons and shall be held in trust for the Distributor until paid to the Distributor and the ownership of said trust fund by the Distributor shall not be questioned whether the monies are physically segregated or not and the Exhibitor agrees to keep such portion of the gross receipts as are payable to the Distributor hereunder, in a separate and distinct fund. In the event the admission fees received during the exhibition of said motion picture are not equal to the amount of the license fee and/or rental due to the Distributor on account of such motion picture, the Exhibitor shall nevertheless remain and continue to be liable for the balance of the amount due and payable to the Distributor after the monies kept in trust for the Distributor shall have been paid to the Distributor.

In the event any motion picture herein embraced is based upon a percentage of the Exhibitor's gross receipts derived from the exhibition of such motion picture the Distributor's share of the gross receipts due to the Distributor hereunder shall belong to the Distributor and shall be held in trust for the Distributor until paid to the Distributor; and the ownership of said trust fund by the Distributor shall not be questioned whether the monies are physically segregated or not, and the Exhibitor agrees to keep such portion of the gross receipts as are payable to the Distributor hereunder, segregated and in a distinct fund.

Advertising and Accessories

Twenty-Fourth: The Exhibitor agrees to advertise and announce each motion picture herein embraced as designated in the main title including the designation of the

motion picture as a Columbia Pictures Corporation production. The Exhibitor further agrees that in all newspaper advertising and publicity issued by the Exhibitor relating to any said motion picture, the Exhibitor shall adhere to the date of announcement contained in the advertising matter issued by the Distributor.

All advertising accessories used by the Exhibitor in connection with the exhibition of the motion pictures herein embraced, shall be leased from or through the Distributor and shall remain the property of the Distributor and same must not be sold, leased or given away by the Exhibitor, but shall be returned promptly to the Distributor after use by the Exhibitor in connection with the exhibition of the particular motion picture.

It is further agreed that the use of the accessories by Exhibitor hereunder is under a license under the respective copyrights relating to such accessories and such accessories shall not be used in any other theatre than the one designated in the Schedule unless otherwise specifically agreed upon in said Schedule.

2971 The following is Film License Agreement between United Artists Corporation and Jackson Park Theatre dated February 8, 1939, from Pl. Ex. 30:

2972 Page 1

United Artists Corporation

Applications and Contracts for Roach Productions

Exchange, Chicago.
Salesman, Eisenberg.

Form 41 No.
Dated 2 8, 1939

Eighteenth: The following Schedule and all the written and printed parts thereof are a part of these licenses;

The Distributor undertakes no obligation hereunder to deliver any motion picture to the Exhibitor which is not delivered for distribution to it by the Producer.

Schedule

Home Office Contract Number	Title of Picture (Subject to Change)	No. Consecutive Days Run and Days of Week	Flat License Fee
7181	There Goes My Heart	2 3	40.00
6759	Captain Fury	2 3	65.00
6746	Water Gipsies	2 3	65.00
7084	Topper Takes a Trip	2 3	60.00
3838	It's Spring Again	2 3	50.00

1. Theatre, Jackson Park. 2. Town and State, Chicago, Ill.
3. Exhibitor, R. Salkin. 4. Zone, S-38. 5. Run, 2nd
6. Clearance, Week of release—Lexington, 1st Week
Hamilton, 2nd Week
Woodlawn, 3rd Week

7. The Exhibitor agrees to charge as minimum admission when exhibiting the above:

Matinee— Adults 15, Children 10.

After 5 P.M.—Adults 25, Children 10.

Special Arrangements: To follow B. & K. Tower Theatre.

The Exhibitor agrees to adhere in its advertising and publicity to the instructions issued to the Exhibitor by the Distributor, and Exhibitor agrees to lease from Distributor all advertising material used by Exhibitor exploit and advertise the aforesaid pictures.

"The Exhibitor agrees that the Distributor may by written notice interchange the terms set forth in the Schedule for any picture with the terms set forth in the Schedule for any other picture, and the Exhibitor agrees to play the pictures upon the interchanged terms so specified by the Distributor."

The Exhibitor agrees not to double-feature any picture licensed hereunder with any picture which has not been approved by the Production Code Administration of MPPDA or approved by some agency of like nature.

The Distributor and Exhibitor agree that the above motion pictures are included in one contract form for convenience only, but that as a matter of substance the application for each picture specified in the Schedule is separate and distinct from the application for any other picture specified in the schedule and each application shall be treated as distinct from any other application by the Distributor and may be accepted or rejected without reference to the accepting or rejecting of any other picture, and that each application accepted is a separate contract as to the particular picture concerned, and this instrument if accepted is to be construed as creating for each picture contracted for a separate contract containing the terms and conditions as are in this instrument contained as though there had been such a separate contract between Distributor and Exhibitor for each picture for which a contract is herein made.

☞Application May Be Rejected Immediately If Exhibitor Does Not Read and Sign Schedule as Indicated.

☞Agreed to

Exhibitor.

This license applies only to those pictures specifically described in the Schedule, and does not include any other pictures produced by the Producer whether distributed by this Distributor or any other Distributor.

In Witness Whereof, the Exhibitor has on the day of 19 , executed this application, which upon acceptance by the Distributor at his home office

in New York City by its affixing hereto the facsimile or perforated or written signature of a person authorized to sign this contract, shall constitute a contract of license for the exhibition of the motion picture specified in the schedule, but only at the theatre and on the dates specified herein and in accordance with the terms and conditions hereof.

Dated the ..... day of ..... 193 .

Exhibitor W. C. Bloom L. S.
An Individual—A Partnership—A Corporation
(Strike out two)
By (Illegible)
General Manager.
(Strike out two)
Lessee
Owner (Strike out two)
Operator
Guaranteed By

Accepted at New York, N. Y.
United Artists Corporation,
By
Person authorized to sign.

End of Contract.

Beginning of the
Contract of License

The following shall constitute the contract of license for each picture for which the application of the Exhibitor is accepted by the Distributor at its home office in New York City:

License—

First: The Distributor grants and the Exhibitor accepts a limited license under copyright of the motion picture for which the application is accepted and a license for use of the sound recorded therewith to exhibit publicly said motion picture and to reproduce publicly such recorded sound in synchronism therewith by use of the positive print delivered to the Exhibitor by the Distributor on the dates set in accordance with the terms hereof and specified or confirmed by the Distributor in writing. Said license does not

include any exhibition prior to 8 a. m. of the first date of exhibition.

Music—

Second: If copyrighted musical compositions are included in such recorded sound, the exhibitor warrants to have at the date of exhibition a license to perform publicly such music from the copyright proprietor thereof.

Payment—

Third: (a) The Exhibitor agrees to pay to the Distributor the license fees in the Schedule set forth at least 7 days in advance of the fixed day of the exhibition of each picture as such days are fixed in the Schedule or in accordance with Article Seventh hereof. Any and all payments to be made hereunder shall be payable to the Distributor at the city in which is located the Exchange from which the Exhibitor is served.

Payment Upon Percentage Basis—Trust Funds

(b) If any part of the license fee of said motion pictures shall be computed upon the exhibitor's gross receipts, such payment or part thereof shall be made to the distributor at the end of each days' exhibition together with a correct itemized statement of the gross receipts of said theatre for admission thereto upon the exhibition date or dates of said motion picture for which payment is so required to be made, signed by the Exhibitor or the Exhibitor's Manager and the Exhibitor's cashier or treasurer. Should the distributor so require, such itemized statement shall be made upon forms furnished by the distributor. Upon said date or dates an authorized representative of the distributor is hereby given the right to verify the sale of all tickets of admission to said theatre, and the receipts therefrom, and for such purpose shall have access to the theatre, including the box office, and also the right to examine the exhibitor's books and records relating to such gross receipts. The distributor, or its authorized representative, also shall have access for a period of one (1) year after the receipt by the distributor of each final box office statement, to all of the exhibitor's books and records for the purpose of verifying such box office statement. The distributor agrees that any information obtained pursuant to the provisions of this Clause will be treated as confidential, excepting in any ar-

bitration proceeding, or litigation in respect to this license. The Exhibitor further agrees to segregate the Distributor's share of the gross receipts as such admission moneys are paid into the box office and not to intermingle such funds with any other moneys and to hold such percentage share of such gross receipts in trust for the Distributor and to pay over such trust funds daily as in this paragraph provided, it being intended that the Distributor's share of the gross receipts shall be exclusively the property of the Distributor from the moment it is paid into the box office.

Liquidated Damages for Breach—

Fourth: 1. If Licensed Upon a Flat Fee. The Exhibitor recognizes and agrees that the damage suffered by the distributor, if the exhibitor fails to exhibit and pay for any of the aforesaid motion pictures is the license fee specified in the schedule above.

2. If Licensed Upon a Percentage Basis. If payment hereunder of the license fee of any such motion picture shall be computed either in whole or in part, upon a percentage of the gross admission receipts of said theatre, and if the Exhibitor fails or refuses to exhibit any such motion picture as herein provided, the Exhibitor shall pay to the Distributor as liquidated damages for each day that the Exhibitor fails or refuses to exhibit any such motion picture, a sum equal to such percentage of the average daily gross receipts in such theatre during the period of thirty (30) operating days to wit, the sixteen (16) operating days immediately prior to and the fourteen (14) days immediately after but including the date of the mailing of the notice of availability for the specific unplayed picture as set forth in Article Seventh Subdivision (2) and in addition any fixed sums payable hereunder in respect thereto. If the Exhibitor shall exhibit any such motion picture for less than the full number of days provided for in this license or less than the full number of days confirmed by the Distributor, the Exhibitor shall pay for each day on which he fails to exhibit the picture the Distributor's percentage of a sum equal to seventy-five percent (75%) of the gross receipts of said picture for the last day of exhibition at said theatre. A sworn statement of the said daily gross receipts shall be delivered by the Exhibitor to the Distributor upon demand therefor.

Delivery of Prints—

Fifth: (1) The Distributor shall deliver a print of 2,000 foot reels or less, the length to be at the option of the Distributor, in physical condition for the exhibition contemplated herein.

(2) Delivery to the Exhibitor or the Exhibitor's authorized agent by delivery at the Distributor's exchange, or to a common carrier, or to the United States Postal authorities, shall constitute delivery for all purposes under the terms of this agreement. Any delivery to a carrier shall be made in accordance with the carrier's delivery schedule in time to reach the place where the said theatre is located at least one hour before the usual time for the opening of said theatre.

Road Show—

Sixth: A road show is solely under the control of the producer and is not a general release, and the producer does not deliver a picture to the distributor for general release until the completion of any such road shows. Thus said motion picture will become available to the Distributor for distribution only upon the completion of any such road show. However, the Distributor agrees that should any motion picture be "road-shown" in the immediate vicinity of the Exhibitor's theatre, in the same zone, as that word is understood in motion picture parlance, this contract for the exhibition of said motion picture may, at the option of either party, be cancelled by written notice given to the other party within 15 days after the commencement date of such roadshow. Otherwise this agreement remains in full force and effect.

Fixing Exhibition Dates—

Seventh: The exhibition date or dates of each motion picture, unless definitely specified or otherwise provided for in the Schedule, or otherwise agreed upon in writing, shall be as follows:

(1) Should any picture hereunder not be generally released in the United States by September 15, 1939, either party hereto may cancel this contract for that picture by giving written notice to the other within ten days after September 15, 1939. Should such written notice not be given the contract will remain in full force and effect.

(2) Provided the exhibitor is not in default hereunder,

or under any other contract with the distributor, the distributor agrees to mail to the exhibitor a notice in writing of the date when any motion picture licensed hereunder will be available for exhibition by the Exhibitor, such date being hereinafter referred to as the available date. Such notice shall be mailed to the exhibitor at least fifteen days prior to the available date therein specified.

(3) The Exhibitor shall, within fourteen days after the mailing of such notice, select exhibition date or dates, such dates to be within the period commencing with the available date and ending thirty days thereafter, by giving to the Distributor written notice of the date or dates so selected. If the exhibition date or dates so selected by the Exhibitor are not open to the Exhibitor, the Distributor shall so notify the Exhibitor, and in such event the exhibition date or dates shall be as provided in the following paragraphs (a) and (b):

(a) If other dates within the same period are open, the Distributor shall notify the Exhibitor thereof, and the Exhibitor agrees immediately to select from such open dates another date or dates. Should the Exhibitor fail so to do, the Distributor may, at its option, either declare the contract to be in default, or designate in

Continued on Page 2

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Contract Continued from Page 1

writing such date or dates within the period beginning not earlier than two weeks and ending not later than six weeks from the date first selected by the Exhibitor, and give written notice thereof to the Exhibitor fourteen days before the date so designated by the Distributor. The Exhibitor must immediately confirm such dates to the Distributor, and should the Exhibitor not confirm the date so designated, the Exhibitor shall be in default under this contract.

(b) If no other dates within the said thirty days are open, then the Exhibitor shall designate the date or dates which shall be within the period beginning not earlier than two weeks, and ending not later than six weeks from the last day of the said thirty days, and written notice thereof shall immediately be given or mailed to the Distributor by the Exhibitor. If the Exhibitor fails to so designate such date or dates, then the Distributor may, at its option,

either declare the contract to be in default, or designate in writing such date or dates within the period beginning not earlier than two weeks and ending not later than six weeks from the date first selected by the Exhibitor, and give written notice thereof to the Exhibitor fourteen days before the date so designated by the Distributor. The Exhibitor must immediately confirm such dates to the Distributor, and should the Exhibitor not confirm the date so designated, the Exhibitor shall be in default under this contract.

(4) In the event of Exhibitor's failing to designate exhibition date or dates for any motion picture as in this contract provided, or should the Exhibitor default in any other contract he has with the Distributor, then and thereupon any sum or sums of money or other fixed consideration payment of which is provided for hereunder shall ipso facto become due and payable by the Exhibitor to the Distributor; anything to the contrary in this contract notwithstanding, and the clearance period provided in this contract in respect to any motion picture is revoked. If payment hereunder of the license fee of any motion picture is to be computed in whole or in part upon the percentage of the gross admission receipts of said theatre damages shall be computed as to all unplayed percentage pictures as agreed upon in paragraph "Fourth", subdivision (2) hereof from the last day of the fifteen (15) days after the mailing of the notice of availability as set forth in paragraph "Seventh", subdivision (2) above which notice of availability was sent concerning the picture in the dating of which the Exhibitor is in default.

(5) The date or dates fixed or determined as in this Article provided shall be for all purposes the exhibition date or dates of the motion pictures as though set forth in the Schedule before execution hereof by the Exhibitor.

(6) The exhibitor is cognizant that the Distributor is bound by contract to cause the motion pictures distributed by it to be exhibited in the several exchange territories in sequence of the general release of such pictures in each respective exchange territory. Therefore, pursuant thereto, the Exhibitor agrees to exhibit each motion picture for the license of which it contracts with the Distributor in the sequence of the notices of availability given the Exhibitor by the Distributor, and that this order of exhibition shall be of the essence of this and the other license agreements entered into by the parties hereto.

Return of Prints by Exhibitor—

Eighth: (a) After each exhibition hereunder, the Exhibitor agrees promptly as instructed in writing by the Distributor, either to return the prints to the Distributor's Exchange, or to deliver the same to a carrier designated by the Distributor, or to deliver such print to another exhibitor, and in any case to pay all transportation charges therefor adequately valued and insured.

(b) In the event the Exhibitor is obligated by such written instructions to deliver any such print to another exhibitor, and fails so to do, and should the Distributor suffer damages thereby, the Exhibitor agrees to pay any and all such damages.

Loss of or Damage to Prints—

Ninth: (a) The Exhibitor shall immediately notify the Distributor's Exchange by telegram of the loss, theft or destruction of or damage to any print between the delivery to and the return thereof by the Exhibitor, and in such event, the Exhibitor agrees to pay to the Distributor a sum equal to the cost of replacement for each lineal foot thereof.

(b) The Exhibitor agrees that all claims by him on account of the condition of or the late or non-arrival of a print shall be barred hereunder unless each claim shall be made by telegram, setting forth fully the condition complained of, within twenty four hours after the exhibition date determined hereunder.

Cutting or Alteration of Prints—

Tenth: The exhibitor shall exhibit each picture in its entirety and shall not copy, duplicate, subrent or part with possession of any print thereof nor shall the exhibitor cut or alter the same, excepting to make necessary repairs thereto, or when required by any duly authorized public official or authority or with the written or telegraphic consent of the distributor, and the exhibitor shall return each print in the same condition as received, reasonable wear only excepted.

Clearance and Run—

Eleventh: (a) Provided the Exhibitor is not in default hereunder, the Distributor agrees to observe the Clearance specified in the schedule hereof.

(b) If the Exhibitor is granted hereunder a second or

subsequent run, the Distributor shall have the right in its sole discretion to advance the Exhibitor's run, and the Exhibitor agrees to exhibit any motion picture the run of which is thus advanced in accordance therewith, even though the Exhibitor's run thus becomes a first run and there are no runs prior thereto.

Advertising Prior to First Run—

Twelfth: If the Exhibitor is granted hereunder a second or subsequent run, the Exhibitor agrees not to advertise any picture to be delivered hereunder except by means of advertisements inside the said theatre not intended for removal therefrom by the public, prior to the exhibition of any such picture by any other exhibitor having the right to the first or prior run thereof. In the event of any violation of this clause the Exhibitor agrees to pay to the Distributor a sum equal to the damage, if any, so caused such other Exhibitor, and the Distributor may, at its option, terminate the license granted hereunder for that picture or any other picture to be delivered by the Distributor. The Distributor, however, shall not be liable for any breach of the provisions of this article caused by any other exhibitor.

Taxes—

Thirteenth: The exhibitor shall pay to the distributor upon demand, any tax, fee or other like charge now or hereafter imposed upon the delivery, or the exhibition or upon the sums payable under this license by the exhibitor to the Distributor, or upon the Distributor's share in any percentage engagement.

Impossibility of Performance—

Fourteenth: Neither party shall be liable unto the other for a default caused by force majeure.

C. O. D. Shipments:

Fifteenth: Exhibitor hereby expressly grants Distributor the right to demand and receive, as a condition precedent to delivery of the print or sound records of any motion picture contracted for hereunder, payment of all amounts then due Distributor by Exhibitor under this or any other exhibition contract between the parties hereto and Distributor may require such payment of all sums then due by means of a C. O. D. shipment or otherwise.

Waiver—

Sixteenth: A waiver by either party of any breach or default of the other party shall not be construed as a waiver of any other or subsequent breach or default of such other party. No notice of availability sent after an Exhibitor's breach as described in "Seventh (4)" above, shall be construed as or constitute a waiver of such breach.

Verbal Promises; Changes, Must Be In Writing—

Seventeenth: This license agreement is complete, and all promises, representations, understandings and agreements in reference thereto have been expressed herein. No change, modification or assignment hereof shall be binding upon the distributor unless in writing signed by an officer or any person duly authorized by the Distributor in its main office in New York City.

The right of the Distributor to approve or reject this application or any other application signed by the Exhibitor at the same time or at any other time is not dependent upon the approval or rejection by the Distributor of this application or of any other application.

Continued on Page 1.

2974 (Filed Oct. 14, 1944, Roy H. Johnson, Clerk.)

The following is Film License Agreement between Universal Film Exchanges, Inc. and Jackson Park Theatre dated December 9, 1938, from Pl. Ex. 33:

2975 Triplicate—Exhibitor's Copy

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Contract Number 1095
Exchange "A" Chicago Population 3375000
Salesman Meyers Seating Capacity
For H. O. use only
Exchange Salesman By:
8

Twenty-first: The following schedu and all of the written and printed parts thereof are part of this license:

Schedule

For H.O.
Use Only

The Distributor grants to the Exhibitor and the Exhibitor accepts a license under copyright subject to the terms and conditions set forth in this contract, including this schedule, to exhibit during the term hereof the following motion pictures, to wit:

Features

All of the feature length motion pictures (exclusive of so-called Western features which are hereinafter separately referred to, and not including reissues) not to exceed forty (40) and not less than thirty-two (32), each of whose date of general release by the Distributor for the distribution to theatres in the United States shall occur during the period commencing September 1, 1938 and ending August 31, 1939, not including however feature pictures previously licensed as a part of the Distributor's 1937-program and except the motion pictures as to which the Distributor is required by contract to obtain the consent or approval of the producer or director thereof or other party to the terms and conditions for licensing the exhibition thereof unless the Distributor obtains such consent or approval to the licensing thereof hereunder. The road-show

ing, "try-out", preview and or pre-release of any motion picture during the said year shall not be deemed a general release thereof.

Number of Feature Photoplays	Consecutive Days Run	To Be Exhibited on Below Specified Days of the Week	Rental Terms The Exhibitor agrees to pay to the Distributor as License fee	Additional Terms
4	2/3		75.00	
4	2/3		65.00	
4	2/3		60.00	
6	1/2		50.00	
6	1/2		35.00	

Playing Arrangement: The Exhibitor agrees to play and pay for ..... of the above feature productions each and every ..... beginning ..... in the order of release, if, and as available according to city release.

The feature motion pictures which are to be exhibited by the Exhibitor under each of the classifications above provided for shall be allocated by the Distributor to such classifications, such allocation to be made at or prior to the date upon which notice of availability of each such motion picture is mailed to the Exhibitor.

It is agreed that in case any motion picture excluded under the Exhibitor's "Option to exclude if group licensed," shall have been allocated by the Distributor to a particular group, then upon its exclusion such allocation shall be deemed automatically rescinded and the Distributor may thereupon allocate a different motion picture to be exhibited upon the terms applicable to the motion picture so excluded.

Admission Prices

The Exhibitor during the whole of the licensed exhibition period of each of the motion pictures exhibited hereunder agrees to and shall charge for admission to said theatre not less than the following prices:

Matinees: Adults, orchestra 15¢ balcony
Children, orchestra 10¢ balcony

Evenings: Adults, orchestra 25¢ balcony
Children, orchestra 10¢ balcony

If during any such period less than said admission prices is charged, the Distributor in addition to all other rights

hereunder shall have the right: (a) immediately to terminate the license of the motion picture then being exhibited, by written notice to such effect to the Exhibitor and upon the giving of such notice, the license of such motion picture shall forthwith terminate and revert to the Distributor; or (b) provided the Exhibitor is granted herein a period of "clearance" to reduce such period by not to exceed one-half in respect to each of the motion pictures thereafter deliverable hereunder; or (c) provided no period of clearance is specified in the Schedule to withhold for a period not to exceed sixty (60) days notice of the date when each motion picture thereafter deliverable hereunder will be available for exhibition by the Exhibitor; and as to each such motion picture the "run" thereof, if any, granted the Exhibitor, shall be deemed revoked and the Exhibitor agrees to exhibit each such motion picture after notice of the available date thereof upon the date or dates determined as provided in Clause Sixth hereof. If the Distributor does not elect to terminate the license of the motion picture then being exhibited, as provided in subdivision (a) of this paragraph, the Exhibitor shall account for all admissions to the said theatre during the exhibition of such motion picture on the basis of the respective admission prices above stipulated for each person admitted to the said theatre, at each performance of said motion picture, provided that if at any such performance any of the prices of admission are greater than the respective amounts above set forth, the Exhibitor shall account to the Distributor on the basis of such larger amounts. The Distributor shall also have the right to suspend all further deliveries of motion pictures to the Exhibitor until such scale of admission prices at the said theatre shall have been restored to at least the amounts above specified. The use of "two for ones" service passes or similar devices shall be construed as a reduction in admission.

The Distributor agrees that the Exhibitor shall have the following Run and Clearance.

Run First week.

Clearance Hamilton not to play before second week. Lexington not to play before first week. Kimbark not to play before second week.

Advertising Accessories

The Exhibitor agrees to lease from the Distributor or the Distributor's authorized agent for use only in connection with the exhibition of each of the motion pictures exhibited hereunder and agrees not to sublease or sell the following advertising accessories:

Item	1 Sh't	3 Sh't	6 Sh't	24 Sh't	8 x 10	11x14	22x28
Prices	15c	45c	90c	2.40 ea	8c Ills	Photos	Photos
					10c ea	75c Set	40c

Amount				Mats		
11x30	Slides	Heralds	Win. Card	See	Press	
Insert	15c ea	3.00 M	7½ ea	Press	Sheet	
25c ea		3.50 M	5.00 per C	Book	Gratis	Misc

Feature Reissues

There are also licensed for exhibition the following reissues:

Title	Release Numbers	Consecutive Days Run	Rental Terms The Exhibitor agrees to pay to the Distributor as License fee	Additional Terms
All Quiet on the Western Front	3071			
Frankenstein	3072			
Love Before Breakfast	3073			
Lady Tubbs	3074			

Westerns

All of the motion pictures of the so-called Western or outdoor type, commonly known in the trade as "Westerns", or so many of them as may be specified under the heading "Westerns", not to exceed twelve (12) and not less than six (6), each of whose date of general release by the Distributor for distribution to theatres in the United States shall occur during the period commencing September 1, 1938 and ending August 31, 1939, and included therein are six "Maynards", which are reissues.

Production	Release Numbers	Consecutive Days Run	Rental Terms Per Picture	Total
6 Bob Baker	3051 to 3056			
6 Ken Maynards (Reissues)	3057 to 3062			

Playing Arrangement: The Exhibitor agrees to pl
and pay for ..... of the above productions each a
every ..... beginning ..... in the order of r
lease, if, and as available.

The Distributor agrees that the Exhibitor shall have t
following Run and Clearance.

Run

Clearance

Short Subjects

All of the 1-reel and 2-reel subjects, known as "Sho
Subjects", or so many of them as may be specified her
under, not to exceed one hundred four (104) reels of Sho
Subjects and not less than seventy-eight (78) reels
Short Subjects, each of whose date of general release
the Distributor for distribution to theatres in the Unit
States shall occur during the period commencing Septemb
1, 1938 and ending August 31, 1939.

Description	Release Numbers	Number Subjects Sold	Consecutive Days Run	Rental Price Per Subject	Total Rental	Playing Arrangeme
Two Reel Subjects						
13 Mentones	3221					
26 Cartoons	3241					
One Reel Subjects						
13 Going Places	3351					
13 Stranger Than Fiction	3364					
Sel. one real subj		39	1/3	3.75	146.25	according to city rele

The total rentals payable by the Exhibitor for Short Su
jects licensed under the terms of the within contract a
$ ..... Irrespective of anything elsewhere co
tained in the said contract, the Exhibitor agrees to pay
the Distributor the said sum of $ ..... in
weekly installments, each in the sum of $ ..... and
final payment of $ ..... commencing on the .....
day of ..... , 19 . The Exhibitor agrees th
the said payments shall be made irrespective of when t
said motion pictures are exhibited by the Exhibitor.
the Exhibitor shall fail to make any payments when du
the Distributor shall have the right, in addition to a
other rights which it may have under the said contract,
suspend further shipments of motion pictures to the Ex
hibitor until such delinquency shall have been remedied.

The Exhibitor waives the right to the delivery of any shorts under this contract which are available but not played by

No run, nor any clearance, is granted to Exhibitor with respect to any of said Short Subjects unless specifically provided for in this Schedule of Short Subjects.

Serials

All of the Serials, or so many of them as may be specified hereunder, (not to exceed four) aggregating fifty-two (52) episodes, each of whose date of general release by the Distributor for distribution to theatres in the United States shall occur during the period commencing September 1, 1938 and ending August 31, 1939.

Description	Number Released	Number Episodes Sold	Consecutive Days Run	Rental Price Per Subject	Total Rental	Starting Date	Playing Arrangement
Flaming Frontier	3781						
Red Barry	3681						
Boy Scout	3781						
Buck Rogers	3881						

Ship Trailer days in advance of playdate.
Trailer Rental $

It is agreed that the Exhibitor shall play and or pay for at least one episode per week commencing
193 in order of release, if, and as available, until all pictures licensed herein are exhibited and or paid for. The Exhibitor agrees to pay each week the sum of $
and a final payment of $ until the full amount of $ is paid for the serials listed in this contract. Payments to start , 193.

The Distributor agrees that the Exhibitor shall have the following Run and Clearance.

Run

Clearance

Exhibitor hereby expressly agrees that Distributor shall have the right to demand and receive, as a condition precedent to delivery of the print and or sound records of any motion picture contracted for hereunder, payment of all amounts then due Distributor by Exhibitor under this

or any other exhibition contract(s) between the parties hereto and Distributor may require such payment of all sums then due by means of a C. O. D. shipment or otherwise.

If the Exhibitor shall fail or refuse to perform any other license agreement with the Distributor, the Distributor, at its option, may, upon such default or refusal to perform, either:

1. Terminate this license agreement, or

2. Suspend the delivery of additional motion pictures hereunder until such default or defaults shall cease and be remedied.

If the Distributor shall elect to terminate this license agreement, then the Distributor shall be entitled to recover from the Exhibitor, as damages for such breach, the license fees payable with respect to all of the motion pictures not theretofore exhibited under this license agreement, and the Distributor shall be under no obligation thereafter to deliver or offer to deliver any picture or pictures hereunder.

Notwithstanding the number of days of exhibition specified for each motion picture in the schedule nor the reference to more than one theatre in the schedule, it is understood and agreed by and between the Distributor and the Exhibitor that the license herein granted is expressly limited to and shall not include any right of exhibition at any time or place or by any means other than:

1. The exhibition of each respective motion picture for the number of days of exhibition selected, designated or otherwise agreed upon, as herein provided, and confirmed in writing by the Distributor to the Exhibitor but not exceeding the maximum number of days specified in the schedule hereof with respect to such motion picture.

2. The exhibition of each respective motion picture at the theatre and on the date or dates of exhibition selected, designated or otherwise agreed upon, as herein provided, and confirmed in writing by the Distributor to the Exhibitor for such picture.

3. The exhibition of each respective motion picture hereunder only by means of the print of the picture furnished to the Exhibitor by the Distributor for the express purpose of exhibition on the date or dates of exhibition selected, designated or otherwise agreed upon, as herein provided, and confirmed in writing by the Distributor to the Exhibitor for such picture.

It is agreed that the Distributor may, at its option, furnish prints of any of the motion pictures licensed hereunder on reels of 2,000 feet maximum capacity.

End of Schedule

Verbal Promises: Representations

This license agreement is complete and no promises or representations of any kind in reference thereto have been made by either party to the other except as expressly set forth herein. No change or modification hereof shall be binding upon the Distributor unless in writing and signed by the general sales manager or an officer of the Distributor.

In witness whereof B P Salkin the Exhibitor, operating the Jackson Park Theatre located at
in the (City and State) Chicago Ill has on (date) 9th December 1938 executed this application, which upon written acceptance thereof by the Distributor shall be deemed to be the license of the said Exhibitor for the exhibition of the motion pictures specified in the Schedule, but only at the said Theatre in accordance with the terms and conditions hereof.

W. C. Bloom
A Partnership A Corporation Trade Name
(Strike two out)
By (Illegible)
Partner Officer Owner
(Strike two out)
Universal Film Exchanges, Inc.
By (Illegible)
Manager

Countersigned and Approved
By
Authorized Home Office Official

Date Dec. 20, 1938.

Universal Pictures Standard License Agreement

(1938-9 Productions)

Agreement of license under copyright, made in one more counterparts between Universal Film Exchang Inc., a Delaware corporation (hereinafter referred to the Distributor), party of the first part, and the Exhibi (hereinafter named and referred to as the Exhibitor, op ating the theatre hereinafter designated), party of second part,

Witnesseth:

The parties hereto agree as follows:

License

First: The Distributor grants the Exhibitor and Exhibitor accepts, a limited license under the respect copyrights of the motion pictures designated and descri in the Schedule hereof and under the copyright of matter included in any sound recorded therewith, to hibit publicly said motion pictures and to reproduce public performances such recorded sound in synchroni therewith, but only at the said theatre and for the numb of consecutive days specified in the Schedule and for other use or purpose; provided that the reproducing equ ment in the said theatre will operate reliably and efficien to reproduce such recorded sound with adequate volu and high quality; and provided further that if copyrigh musical compositions are included in such recorded sou the Exhibitor will have at the date or dates of the exhi tion of each such motion pictures a license from the co right proprietor thereof or from any licensee of such co right proprietor to perform publicly the said copyrigh musical compositions. If more than one theatre is here after designated the said motion pictures are licensed exhibition at only one of such theatres unless otherwise the Schedule specifically provided in writing.

Term and Warranty

Second: (a) The term of this Agreement shall begin with the date fixed or determined for the exhibition at the said theatre of the first motion picture deliverable hereunder and shall continue for a period of one year thereafter unless otherwise in the Schedule provided. The Distributor agrees during said term to deliver to the Exhibitor, and the Exhibitor agrees to exhibit at said theatre during said term upon the date or dates herein provided for, a positive print of each of said motion pictures except such as may be excluded as provided in Clause Fourteenth hereof. The Distributor warrants that each positive print will be in good physical condition for projection and exhibition, and will clearly reproduce the recorded sound in synchronism therewith if properly used upon standard reproducing equipment. If the recorded sound is not recorded upon a print, all references herein to a print shall be deemed to include the records, discs and any other device upon which sound may be recorded for reproduction with the exhibition of a print.

Damages—Failure to Deliver

(b) If the Distributor shall fail or refuse to deliver, or the Exhibitor shall fail or refuse to exhibit during the term hereof, any of said motion pictures, excepting those which may be eliminated at provided in Clause Fourteenth hereof, or if the Distributor shall wilfully violate any of the provisions of Clause Seventh hereof or shall deliver to the Exhibitor a print of any motion picture which print shall be determined was not in condition for exhibition and for the reproduction of sound as provided in Clause Second, the Exhibitor or the Distributor, as the case may be, shall pay the damage so caused, and if such damage cannot be definitely computed shall pay as liquidated damages a sum equal to the fixed sum herein specified as the rental of each such motion picture or a sum computed as provided in Clause Third (c) hereof, if the rental of any such motion picture is to be determined, either in whole or in part upon a percentage of the admission receipts of said theatre or any part thereof or upon a percentage of such receipts and a fixed sum; provided that any claim by the Exhibitor with respect to the condition of a print shall be

deemed to have been waived by the Exhibitor unless n
of such claim shall have been given by the Exhibitor t
Distributor's exchange from which the Exhibitor is se
by telephone or telegraph, or in person, immediately
the first public exhibition thereof by the Exhibitor
written confirmation thereof mailed by the Exhibitor
the same day to the Distributor's said exchange.

Payment

Third:- (a) The Exhibitor agrees to pay for such fi
as to each such motion picture the fixed sums specifi
the Schedule at least three (3) days in advance of the
of delivery of a print thereof at the Distributor's exc
or of the date of shipment to the Exhibitor from ab
exhibitor, unless after the acceptance of this applic
by the Distributor such payment shall be otherwise a
to by the Distributor in writing signed by an officer o
Distributor. All payments hereunder shall be made t
Distributor at the City in which is located the exc
from which the Exhibitor is served.

Percentage Bookings

(b) If the rental of any such motion picture is
determined either in whole or in part upon the admi
receipts of said theatre or any part thereof, the Exhi
agrees to pay such rental immediately after the las
hibition upon the last date of the exhibition of each
motion picture or if requested by the Distributor a
end of each day's exhibition. In each such case the
hibitor shall deliver to the Distributor immediately
the last exhibition upon each date of exhibition of
such motion picture a correct itemized statement o
gross receipts of said theatre for admission thereto
each such date. Such statement shall be signed by th
hibitor or the Manager or Treasurer of said theatre
the Cashier thereof and shall include a statement of
facts and figures as may be provided in the Schedule
furnished by the Exhibitor, and if requested by the
tributor, shall be made upon forms furnished by the
tributor. Upon the exhibition date or dates of each m
picture an authorized representative of the Distribu
hereby given the right to verify the sale of all tick

admission to said theatre, and the receipts therefrom; and for such purpose shall have access to the theatre, including the box office, and also the right to examine all relevant entires relating to such gross receipts in all the Exhibitor's books and records, and if hereunder it is provided that the Exhibitor make certain expenditures and or deductions, to examine all entries relating to such expenditures and or deductions. Such right of access and examination of the Exhibitor's books and records limited as aforesaid, shall continue for a period of four (4) months after the receipt by the Distributor of each such statement. The Distributor agrees, unless such representative is in the continuous employ of the Distributor or employed as a checker, not to employ as a representative for such purpose any person a resident of or employed in the place where the said theatre is located, other than a person engaged in business as an accountant. The Distributor agrees that any information obtained pursuant to the provisions of this clause will be treated as confidential, excepting in any arbitration proceedings or litigation in respect to this license.

Liquidated Damages—Percentage Bookings

(c) If the Exhibitor fails or refuses to exhibit any of said motion pictures as herein provided and the rental or any part thereof is to be computed in whole or in part upon a percentage of the admission receipts of said theatre, the Exhibitor shall pay the Distributor as liquidated damages for each day the Exhibitor fails or refuses to exhibit such motion pictures, in addition to any fixed sums payable hereunder in respect of such motion picture, a sum equal to such percentage of the average daily gross receipts of such theatre on each date any feature motion picture distributed by the Distributor was exhibited therein during the period of ninety (90) days prior to the date or dates when said motion picture should have been so exhibited hereunder, or if no feature motion picture distributed by the Distributor was exhibited at such theatre during said ninety day period, then a sum equal to such percentage of the average daily gross receipts of such theatre during the period of thirty operating days immediately prior to the date or dates when such motion pictures should have been exhibited, or prior to the date of such failure or refusal to exhibit any of said motion pic-

tures; provided that if the Exhibitor shall exhibit such motion pictures for less than the full number of days provided for in the Schedule, for each day less than said full number of days, the sum equal to such percentage shall be computed upon a sum equal to sixty-five per cent (65%) of the gross receipts of said theatre during the last day of the exhibition thereat of such motion picture. A sworn statement of the said daily gross receipts shall be delivered by the Exhibitor to the Distributor upon demand therefor.

Delivery and Return of Prints

Fourth: (a) After each of said motion pictures is generally released for public exhibition and becomes available for exhibition hereunder by the Exhibitor, the Distributor agrees to deliver, as hereinafter provided, a print thereof to the Exhibitor.

(b) The public exhibition of any of said motion pictures for three (3) consecutive days at prices usually charged for admission to the theatre where so exhibited in the territory wherein is located the exchange from which the Exhibitor is served, excepting any "road show", "try-out", "preview", or "pre-release" exhibitions thereof, shall be deemed the general release for public exhibition of such motion picture but only in such territory. A "pre-release" exhibition shall be deemed any exhibition because of seasonal conditions making desirable exhibitions in advance of general release as herein defined.

(c) The Exhibitor agrees to exhibit each of said motion pictures in the order of its general release by the Distributor in the exchange territory in which said theatre is located. The Exhibitor shall have the right to select any of the motion pictures, excepting the last deliverable hereunder, for exhibition out of the order of its general release, subject to prior runs and or clearance granted other exhibitors, on the date or dates determined as provided in Article Sixth hereof or otherwise agreed upon, but only upon the following conditions (a) that the Exhibitor is not in default hereunder and shall have fully complied with all the provisions, if any, set forth in the Schedule for the exhibition of one or more of said motion pictures at specified intervals; and (b) that the Distributor and the Exhibitor shall then agree upon the date or dates upon which all of the motion pictures generally released prior to the

general release of such motion picture and available for exhibition hereunder shall be exhibited by the Exhibitor, which date or dates shall be within thirty (30) days from the first exhibition date of the motion picture to be exhibited out of the order of its general release; or in the alternative the Exhibitor shall then pay to the Distributor the license fee for each of such motion pictures then generally released and available for exhibition hereunder, and as to any thereof which shall not be exhibited by the Exhibitor within thirty days from the first exhibition date of the motion picture to be exhibited out of the order of its general release, the grant of the run and clearance period in respect thereof shall be deemed waived by the Exhibitor. Upon the failure or refusal of the Exhibitor to exhibit any of such motion pictures then generally released and available for exhibition hereunder within said thirty day period or to pay the license fee thereof, the right of the Exhibitor to thereafter select for exhibition any motion picture out of the order of its general release shall be forfeited. The provisions of this paragraph (c) shall not be deemed to limit or qualify the provisions of Article Sixth hereof excepting as in this paragraph (c) specifically provided.

(d) The Distributor shall make deliveries hereunder to the Exhibitor or to the Exhibitor's authorized agent, by, delivery at the Distributor's exchange, or to a common carrier, or to the United States Postal authorities. If deliveries are made to a carrier or to a post office, they shall be made in time for prints to reach the place where the said theatre is located in time for inspection and a projection thereof before the usual time for opening said theatre.

(e) The Exhibitor agrees to return immediately after the last exhibition on the last date of exhibition licensed, each print received hereunder, with its reels and containers, to the exchange of the Distributor from which the Exhibitor is served or as otherwise directed by the Distributor in the same condition as when received, reasonable wear and tear due to proper use excepted. Exhibitor agrees to pay all costs of transportation of such prints, reels, and containers from the Distributor's exchange or the last previous exhibitor having possession of the same, and return to the Distributor's exchange; or if directed by the Distributor, to ship such positive prints elsewhere than to the Distributor's exchange transportation charges col-

lect. It is agreed that the delivery of a positive print properly directed and packed in the container furnished by the Distributor therefor, to a carrier designated or used by the Distributor and proper receipt therefor obtained by the Exhibitor, shall constitute the return of such positive print by the Exhibitor.

(f) If the Exhibitor fails to or delays the return of any positive print to the Distributor or fails to forward or delays forwarding (as directed by the Distributor) any such print to any other exhibitor, the Exhibitor agrees to pay the Distributor the damage, if any, so caused the Distributor and in addition the damage, if any, so caused such other exhibitor. The Exhibitor shall have the right to participate in any compromise of or intervene in any arbitration or legal proceeding based upon any claim for such damage asserted against the Distributor by another exhibitor; notice of which shall be given the Exhibitor by the Distributor.

Loss and Damage to Prints

Fifth: The Exhibitor shall pay to the Distributor a sum equal to the cost of replacement at the Distributor's exchange for each linear foot of any print, lost, stolen or destroyed or injured in any way in the interval between the delivery to and the return thereof by the Exhibitor in full settlement of all claims for such loss, theft, destruction or injury. Such payment, however, shall not transfer title to or any interest in any such positive print to the Exhibitor or any other party, nor release the Exhibitor from any liability arising out of any breach of this agreement. The Distributor shall at the option of the Exhibitor repay or credit to the Exhibitor any sums paid by the Exhibitor for any lost or stolen print, excepting "news reels", upon the return of such lost or stolen print to the Distributor within sixty (60) days after the date when the same should have been returned hereunder. The Exhibitor shall not be liable for the damage or destruction of any print, provided the Exhibitor establishes such damage or destruction occurred while in transit from the Exhibitor and delivery thereof was made as hereinabove provided. The Exhibitor shall immediately notify the Distributor's exchange by telegram of the loss, theft or destruction of or damage or injury to any print. If any print shall be

received from the Exhibitor by the Distributor or any subsequent exhibitor in a damaged or partially destroyed condition it shall be deemed to have been so damaged or destroyed by the Exhibitor unless the latter, immediately after the first public exhibition thereof shall have telegraphed the Distributor's exchange that such print was received by the Exhibitor in a damaged or partially destroyed condition, and setting forth fully the nature of such damage and the amount of footage so damaged or destroyed.

Selection of Play Dates

Sixth: Unless otherwise agreed upon or unless definitely specified or otherwise provided for in the Schedule, the exhibition date or dates of each of said motion pictures shall be determined as follows:

1. Subject to prior runs and or clearance granted or hereafter granted by the Distributor to other exhibitors and within a reasonable time after a print or prints of any of said motion pictures are received at the exchange of the Distributor out of which the Exhibitor is served, and provided the Exhibitor is not in default hereunder, the Distributor shall mail to the Exhibitor a notice in writing of the date when each such motion picture will be available for exhibition by the Exhibitor (which date is hereinafter referred to as the "available date"). Such notice shall be mailed to the Exhibitor at least fifteen (15) days before the available date therein specified.

2. Within fourteen (14) days after the mailing of such notice, the Exhibitor shall select an exhibition date or dates not theretofore assigned to another exhibitor or other exhibitors, within the period commencing upon the available date and ending thirty (30) days thereafter and give to the Distributor written notice of the date or dates so selected.

3. Upon the failure of the Exhibitor to so select such date or dates the Distributor shall designate such date or dates by mailing written notice thereof to the Exhibitor.

Clearance and Run

Seventh: The Distributor agrees not to exhibit or grant a license to exhibit any of said motion pictures for exhibition in conflict with the "run" or prior to the expiration

of the "clearance period" if any in the Schedule specified at any theatre therein named or within the territorial limits therein specified. Such period of clearance as to each of said motion pictures shall be computed from the last date of the exhibition thereof licensed hereunder. If clearance is granted against a named theatre or theatres indicating that it is the intention of the Distributor to grant such a clearance against all theatres in the immediate vicinity of the Exhibitor's theatre then unless otherwise provided in the Schedule, such clearance shall include any theatre in such vicinity thereafter erected or opened.

Description of Pictures

Eighth: The Distributor warrants that none of the motion pictures are reissues of old negatives, old negatives retitled or foreign produced by a foreign producer except those specifically specified as such in the Schedule, and further that none of said motion pictures contains or will contain any advertising matter for which compensation is received by the Distributor, or any subsidiary or affiliate of the Distributor.

Advertising Prior To First Run

Ninth: (a) If the Exhibitor is granted a subsequent run of any of the said motion pictures, the Exhibitor shall not advertise any thereof by any means of advertising prior to or during the exhibition thereof by any other exhibitor having the right to prior run thereof.

(b) Nothing herein contained shall be deemed to prohibit the Exhibitor from advertising generally all of the feature motion pictures licensed for exhibition by the Exhibitor as a group, but such general advertising shall not refer to any one of said motion pictures at any time prior to its exhibition by any other exhibitor having first or immediately prior run thereof, excepting as hereinabove provided.

(c) The Exhibitor shall not advertise by any means of advertising any of said motion pictures which may be road shown by the Distributor and not excepted and excluded from this license, until after the completion of such road showing in the United States, and then only as permitted in paragraph (a) of this Clause.

(d) For a breach of the provisions of this Clause the Distributor shall have in addition to all other rights the right to exclude from this license any motion picture advertised in violation of the provisions hereof by written notice to such effect mailed to the Exhibitor and upon the mailing of such notice the license of such motion picture shall terminate and revert to the Distributor.

Acceptance by Distributor

Tenth: Until accepting in writing by an officer of or any person authorized by the Distributor and notice of acceptance sent to the Exhibitor this instrument shall be deemed only an application for a license under Copyright, and may be withdrawn by the Exhibitor any time before such acceptance. Unless such notice of acceptance is sent the Exhibitor by mail or telegraph within fifteen (15) days after the date thereof, if the said theatre of the Exhibitor is located East of the Mississippi River, and within thirty (30) days after the date thereof if located West of said river, said application shall be deemed to have been withdrawn. The deposit by the Distributor of any check or other consideration given by the Exhibitor at the time of application as payment for any purpose or the delivery of a print of any of said motion picture shall not be deemed an acceptance hereof by the Distributor.

Assignment on Sale of Theatre

Eleventh: This license shall not be assigned by either party without the written consent of the other, provided, that if the Exhibitor sells the said theatre or transfers any interest therein and is not in default hereunder, the Exhibitor may assign this license to the purchaser of the theatre or of such interest without the written consent of the Distributor but any such assignment shall not be valid or of any effect hereunder unless a written acceptance thereof by the assignee assuming the obligations of the Exhibitors shall be delivered to the Distributor. Any such assignment shall not release the Exhibitor from any liability hereunder unless such release from liability is consented to by the Distributor in writing.

Taxes

Twelfth: The Exhibitor shall pay to the Distributor upon demand, any tax, fee or other like charge now and or hereafter imposed or based upon the delivery and or the exhibition of prints of motion pictures and or upon the sums payable under this license by the Exhibitor to the Distributor. If under any statute or ordinance any such tax, fee or other like charge is or shall be payable or paid by the Distributor and the exact amount payable hereunder by the Exhibitor is not therein definitely fixed or cannot be exactly determined, then the Exhibitor shall pay such part of any such tax, fee or other like charge paid or payable by the Distributor as shall be fixed in the manner determined by the then President of the American Arbitration Association.

Prevention of Performance

Thirteenth: If the Exhibitor shall be prevented from exhibiting or the Distributor from delivering any of the said motion pictures for causes beyond their direct control then this license in respect to each such motion picture shall terminate and revert to the Distributor without liability on the part of either party, provided reasonable written notice of such termination and the cause thereof is given.

Option To Exclude If Group Licensed: This Article Does Not Apply To Short Subjects

Fourteenth: If the Exhibitor has contracted to exhibit all of the feature motion pictures listed in the schedule hereto and offered by the Distributor to the Exhibitor, the Exhibitor shall have the privilege of excluding from this license agreement not to exceed 10% of the total number of feature motion pictures licensed hereunder, provided the Exhibitor is not in default under this license agreement and has complied with all of the provisions hereof, if any, for the exhibition of such feature motion pictures at specified intervals. Such privilege of exclusion may be exercised only in the event aforesaid, and if the Exhibitor shall give to the Distributor written notice of each feature motion picture to be excluded not later than 14 days prior

to the date of availability to the Exhibitor of such feature motion picture.

In computing the number of feature motion pictures which may be excluded hereunder, fractions of more than one-half shall be regarded as one.

Upon the exclusion of any feature motion picture the license therefor and all rights with respect thereto shall terminate and revert to the Distributor.

First Run Exhibitions

Fifteenth: (a) If the Exhibitor is granted a first run of the said motion pictures, the Exhibitor shall exhibit each of the feature motion pictures excepting those described in Paragraph (d) of this Clause within the period beginning with the date scheduled and announced by the Distributor for the general release of each feature motion picture in the territory wherein is located the exchange of the Distributor out of which the Exhibitor is served and ending one hundred and twenty (120) days thereafter, notwithstanding any provision of Clause Sixth hereof to the contrary. If the first exhibition date of any of the said motion pictures shall occur on a date later than ninety (90) days after its scheduled and announced general release, then the period of clearance of such motion picture shall be reduced so as to expire one hundred and twenty (120) days after said scheduled date of its general release. If the Exhibitor is granted a first run of the said motion pictures and the Exhibitor fails to exhibit any feature motion picture within said period of one hundred and twenty (120) days, the grant of the said first run and the clearance period in respect thereof shall be deemed waived by the Exhibitor and the License fee as to such feature motion picture shall thereupon forthwith become due payable to the Distributor, with the right to the Exhibitor to exhibit such feature motion pictures as hereinafter in Paragraph (e) of this Clause provided.

Second Run Exhibitions

(b) If the Exhibitor is granted a second run of the said motion picture and any other exhibitor having been granted the first run thereof immediately prior to such second run fails to exhibit any of the feature motion pictures, except

ing those described in Paragraph (d) of this Clause within the said period of one hundred and twenty (120) days specified in Paragraph (a) of this Clause, the Exhibitor shall exhibit each such feature motion picture within the period beginning with the date of the expiration of the said one hundred and twenty (120) days period and ending fourteen (14) days thereafter, notwithstanding any provision of Clause Sixth hereof to the contrary. If the Exhibitor is granted a second run of the said motion pictures and the Exhibitor fails to exhibit any feature motion picture within said fourteen (14) days period the grant of such second run and the clearance period if any in respect thereof shall be deemed waived by the Exhibitor and the license fee as to such feature motion picture shall thereupon forthwith become due and payable to the Distributor with the right to the Exhibitor to exhibit such feature motion picture as hereinafter in Paragraph (e) of this Clause provided.

Subsequent Run Exhibitions

(e) If the Exhibitor is granted a run subsequent to a second run of the said motion pictures and any other exhibitor having been granted the second run thereof immediately prior to such subsequent run fails to exhibit any of the feature motion pictures, excepting those described in Paragraph (d) of this Clause within the said period of fourteen (14) days specified in Paragraph (b) of this Clause the Exhibitor shall exhibit such feature motion picture within the period beginning with the date of the expiration of the said fourteen day period and ending seven (7) days thereafter, notwithstanding any provision of Clause Sixth hereof to the contrary. If the Exhibitor is granted a run subsequent to a second run of the said motion pictures and the Exhibitor fails to exhibit any feature motion picture within said seven (7) day period, the grant of such subsequent run and the clearance period if any in respect thereof shall be deemed waived by the Exhibit and the license fee as to such feature motion picture shall thereupon forthwith become due and payable to the Distributor with the right to the Exhibitor to exhibit such feature motion picture as hereinafter in Paragraph (e) of this Clause provided.

Extended Run

(d) Any of the motion pictures which shall have been exhibited at any theatre in the said territory for more than one show week prior to the run granted the Exhibitor shall be excepted from the provisions of this Clause and of Paragraph (b) of Clause Fourth.

Exhibition After Revocation Of Run And Clearance

(e) Upon the waiver of the grant of the run and or clearance period of any feature motion picture as provided in Paragraphs (a), (b) or (c) of this Clause, the Exhibitor upon payment of the sum or sums payable hereunder as provided in this Clause for the license to exhibit such feature motion picture, shall have the right to exhibit the same hereunder upon a date or dates not in conflict with any run and or clearance period granted or hereafter granted to other exhibitors, upon written request mailed or delivered to the Distributor within sixty (60) days after the last date upon which such feature motion picture should have been exhibited by the Exhibitor as provided in this Clause. Failing to make such request within said period of sixty (60) days the license to exhibit such feature motion picture granted hereunder shall terminate and revert to the Distributor.

Monies In Trust

Sixteenth: Where this agreement calls for the payment of a fixed and definite rental for any motion picture (that is to say, not based upon a percentage of the gross receipts) then in case payment is not made in advance of the exhibition of any such motion picture and credit is extended to the Exhibitor, in consideration therefor, the Exhibitor agrees that the Distributor shall receive its rental for any such motion picture with respect to which credit has been so extended, out of the first admission receipts from the patrons paying admission during the exhibition of any such motion picture up to the amount due the Distributor and such admission receipts shall belong to and be the property of the Distributor when they are paid by the patrons and shall be held in trust for the Distributor until paid to the Distributor and the ownership of said trust fund by the Distributor shall not be questioned whether the moneys are physically segregated or not and the Exhibitor agrees to keep such portion of the

gross receipts as are payable to the Distributor hereunder, in a separate and distinct fund. In the event the admission fees received during the exhibition of said motion picture are not equal to the amount of the license fee and or rental due to the Distributor on account of such motion picture, the Exhibitor shall nevertheless remain and continue to be liable for the balance of the amount due and payable to the Distributor after the moneys kept in trust for the Distributor shall have been paid to the Distributor.

In the event any motion picture herein embraced is based upon a percentage of the Exhibitor's gross receipts derived from the exhibition of such motion picture the Distributor's share of the gross receipts due to the Distributor hereunder shall belong to the Distributor and shall be held in trust for the Distributor until paid to the Distributor; and the ownership of said trust fund by the Distributor shall not be questioned whether the moneys are physically segregated or not, and the Exhibitor agrees to keep such portion of the gross receipts as are payable to the Distributor hereunder segregated and in a distinct fund.

Roadshows

Seventeenth: (a) The Distributor shall have the right to exhibit and or cause to be exhibited as a "roadshow", at any time prior to the exhibition thereof hereunder, such of the motion pictures licensed hereunder as the Distributor may from time to time select and determine, provided however, that such roadshow exhibitions shall be at theatres at which admission prices for evening performances, during such exhibition thereof, of not less than one dollar, shall be charged for the majority of the orchestra seats, and further provided that, except in the cities of New York and Los Angeles, not more than two of such motion pictures shall be so roadshown.

(b) If and when any such roadshow exhibition shall be in the City of New York and or the City of Los Angeles, and if the Exhibitor's theatre is situated in the territory then served by the Distributor's exchange or exchanges located in New York or in Los Angeles, as the case may be, the Distributor shall have the right to except and exclude from this license not to exceed two of such motion pictures so roadshown in each or both of said territories, upon sending to the Exhibitor written notice to such effect

not later than four (4) weeks after the commencement of such roadshow exhibition and provided that the Distributor shall by like notice except and exclude such motion picture from all other license agreements containing this Clause and licensing the exhibition of such motion picture in such territory. The exception and exclusion of any such motion picture in the territory then served by the Distributor's exchange or exchanges located in the City of Los Angeles, or in the City of New York, as the case may be, shall not be deemed to require the Distributor to except and exclude the same motion picture in both of said territories.

(c) If and when any such roadshow exhibition, excepting those in the City of New York and or in the City of Los Angeles, shall be in the territory served by the Distributor's exchange or exchanges serving the Exhibitor's theatre, the Distributor shall have the right to except and exclude from this license not to exceed two of such motion pictures so roadshown upon sending to the Exhibitor written notice of such effect within seven (7) days after the commencement of such roadshow exhibition and provided that the Distributor shall by like notice except and exclude each such motion picture from all other license agreements containing this Clause and licensing the exhibition of such motion picture in such territory.

(d) The inadvertent omission to send to any of such other exhibitors the notice provided for in Paragraphs (a) and (b) of this Clause shall not be deemed to affect the exception and exclusion from this license of any such motion picture.

(e) The Distributor may so exercise such right to except and exclude any such motion picture from time to time, in the respective territories, as above defined, in the United States. Any motion picture so roadshown in any place in the United States, and not excepted and excluded from this license as aforesaid, shall not be deemed available for exhibition hereunder until after the completion of such roadshowing of such motion picture in the United States, and such motion picture shall be exhibited hereunder when generally released by the Distributor and as and when available for exhibition by the Exhibitor, and the term of this license agreement specified in Clause Second shall be in respect to each such motion picture, extended to and including the date or dates of exhibition by the Exhibitor hereunder of each thereof.

(f) For each motion picture that the Distributor shall except and exclude, as aforesaid, the Exhibitor is hereby granted the option to except and exclude from this license (in addition to those which may be excluded as provided in Clause Fourteenth) one of the other motion pictures licensed hereunder, but only if the Exhibitor shall give to the Distributor written notice to such effect not later than fourteen days before the date fixed for the exhibition hereunder of such other motion picture. The Distributor may exhibit and or license the exhibition of any and all motion pictures excepted and excluded from this license by the Distributor and or the Exhibitor, as aforesaid, when and where desired by the Distributor, free from all claims of the Exhibitor in respect thereof and the license of each thereof shall forthwith upon exclusion as hereinbefore provided terminate and revert to the Distributor.

Exhibitor's Default

Eighteenth: If the Exhibitor shall fail or refuse to pay the rental of any such motion pictures as provided in this license or to furnish statements of the receipts of said theatre, if any are required hereunder, or to give the Distributor's representative access to the said theatre or its box office and or the Exhibitor's books and records relative to motion pictures the rentals of which are based upon the said theatre's admission receipts as herein provided, or if the Exhibitor shall exhibit or permit the exhibition of any of said motion pictures at any time or place other than as herein specified, or if the Exhibitor becomes insolvent or is adjudicated a bankrupt, or executes an assignment for the benefit of his creditors, or if a receiver is appointed for any of the property of the Exhibitor, or if the Exhibitor voluntarily or by operation of law should lose control of the said theatre or of his said interests therein, making it impossible for the Exhibitor to exhibit the said motion pictures at the said theatre, then upon the happening of any one or more of said events, the Distributor may, at its option, (1) terminate this license agreement, or (2) suspend the delivery of additional motion pictures hereunder until such default or defaults should cease and be remedied. It is agreed that the exercise of any of said remedies by the Distributor shall be in addition to and without prejudice to any right or remedy of the Distributor

against the Exhibitor at Law or in equity and or otherwise provided for in this license agreement.

Cutting Or Alteration Of Prints.

Nineteenth: The Exhibitor shall exhibit each print in its entirety and shall not copy, duplicate, subrent or part with possession of any print. The Exhibitor shall not cut or alter any print, excepting to make necessary repairs thereto, or when required by any duly constituted public official or authority or with the written or telegraphic consent of the Distributor. The Exhibitor however may cut the print of a news reel and in such case shall completely restore all parts cut therefrom, prior to the return thereof to the Distributor or shipment elsewhere if so directed by the Distributor, in the same condition as received by the Exhibitor.

Midnight Shows

Twentieth: The license herein granted for the number of days specified in the schedule shall not include the right of exhibition at any time previous to dawn of the first licensed and booked day of exhibition without securing express permission therefor.

(continued on reverse side)

2977 (Filed Oct. 11, 1944. Roy H. Johnson, Clerk.)

The following is Film License Agreement between Central States Pictures Corporation and Jackson Park Theatre dated June 28, 1937, from Pl. Ex. 35:

2978 Exhibitor Copy

Central States Pictures Corporation
Superior Pictures
831 S. Wabash Ave. Chicago, Ill.
Inc.

Indianapolis, Ind.	Milwaukee, Wis.	St. Louis
440 N. Illinois St.	717 W. Wells St.	3317 Olive St.

Agreement, made in Chicago this 28th day of June, 1937, between Superior Pictures, Inc., (hereinafter called the "Distributor"), party of the first part, and Jackson Park Theatre Co., an exhibitor operating the Jackson Park theatre, at No. 6711 Stony Island Ave., Street, City (Town) of Chicago, State of Illinois (hereinafter called the "Exhibitor), party of the second part.

Rel. No.	Pictures (Description—Star or Story) (Titles Subject to Change)	Number of Days	License Fee or Minimum Guarantee Rental	Additional Terms: Admission
	Gambling With Souls	2	July 14-15	Mat. 20c Eve. 30c
	Distributor is to receive 25% of the total gross receipts after the Exhibitor has deducted the cost of 5,000 imprinted heralds $12.50, services of sound truck two days $25.00. Also cost of second picture.			Run:
	Distributor is to furnish special display and trailer free of charge.			Protection:
				Playing Arrangement:

Number of Pictures Offered 1 Number Licensed 1

End of Schedule

Agreement, made in one or more counterparts between Superior Pictures, Inc., a corporation (hereinafter referred to as the "Distributor"), party of the first part, and the Exhibitor (hereinafter named and referred to as the "Exhibitor," operating the theatre or theatres hereinafter designated), party of the second part.

Witnesseth: The parties hereto agree as follows:

Schedule Incorporated In This Agreement

First: The schedule contained and referred to herein and all parts thereof, whether written or printed, are hereby deemed included in and made a part of this agreement.

License

Second: (a) The Distributor hereby grants to the Exhibitor, and the Exhibitor accepts, a license under the respective copyrights of the several photoplays designated and described in the Schedule herein subject to the terms, limitations and conditions in this agreement contained to exhibit and reproduce and the Exhibitor agrees to exhibit and reproduce in synchronism and co-ordination with the recorded sound thereof (during the period of one year commencing with the date fixed or determined as hereinafter provided for the exhibition in the theatre hereinafter designated of the first photoplay deliverable hereunder, unless otherwise in the Schedule provided) each of such photoplays at the said theatre only for the number of successive days in the said Schedule provided. If more than one theatre is hereinafter designated no photoplay is licensed hereunder for exhibition at more than one of each theatres unless otherwise specifically agreed upon in the Schedule.

(b) If any such photoplays (except photoplays which shall have been already "generally released" by the Distributor) shall not be "generally released" by the Distributor for distribution in the United States during the period commencing _____ and ending _____, then such photoplays shall be excepted and excluded from this license, and all claims or causes of action in respect thereto are hereby expressly waived by the Exhibitor and the Distributor may exhibit and reproduce such recorded sound thereof or license the

exhibition and the reproduction of such recorded sound thereof of any photoplays, excepted and excluded as aforesaid, when and where desired by the Distributor.

Recorded Sound: Warranties

Third: (a) "Recorded sound", as used in this agreement, is deeded to mean the spoken words, music or other sounds recorded upon a positive print of a photoplay or upon a record, disc or other similar devices separate and apart from a positive print, for use in sychronism therewith. Distributor does not warrant that such recorded sound will be recorded on the positive print or on the records, discs or other similar devices, and reserves the right to use any one or more methods of recording it may from time to time determine.

(b) The Exhibitor warrants and agrees first, that the sound reproducing equipment installed in said theatre will operate reliably and efficiently to reproduce such recorded sound with adequate volume and high quality, whether recorded upon the positive print or upon records, discs or other similar devices; and second, that if copyrighted musical compositions are included in such recorded sound, the Exhibitor shall, at the time of the exhibition of such photoplays and the reproduction of such recorded sound, have an effective license from the American Society of Authors, Composers and Publishers publicly to perform the copyrighted misucal composition in the repertoire of said Society.

(c) The Exhiibtor agrees to run all of said photoplays on the same size reels as furnished by Distributor; to return to Distributor's Exchange all damaged or broken parts of all sound records, discs or other similar devices, if any have been delivered to Exhibitor hereunder, immediately following the last exhibition of the photoplay with which such sound records are used; and if such recorded sound is recorded on records, discs or other devices, to replace with black, blank, positive stock all parts removed from the positive print or any photoplay while in the Exhibitor's possession, but Exhibitor shall have no right to remove any part of the positive print except as specifically authorized elsewhere in this license.

Time And Place Of Exhibition

Fourth: The Exhibitor agrees to exhibit and reproduce under said license said photoplays, but only at the theatre hereinafter specified, on the exhibition date or dates fixed in the Schedule or determined as hereinafter provided, and not to allow any positive print and records, discs, or other similar device if any thereof to leave the Exhibitor's possession during the period specified for the exhibition thereof by the Exhibitor, nor to exhibit or to permit the exhibition or reproduction of any such positive print and or records, discs or other similar device if any, at any other time or place. Such license shall be specifically for such exhibition and reproduction of such photoplays, and for no other purpose.

In Witness Whereof Jackson Park Theatre Co. the Exhibitor, has on (Date) 6 27 37 executed this application, which upon written acceptance by the Distributor in the space to the left provided below shall be deemed to be the license to the Exhibitor for the exhibition and reproduction of the photoplays specified in the Schedule at said theatre in accordance with the terms hereof.

Jackson Pk. Theatre Co., L. S.
Exhibitor.

By R. B. Salkin.

Partner General Manager Officer
Individual (Strike out three)

Central States Pictures Corporation
Superior Pictures, Inc.

Salesman.

Manager.

Countersigned and Approved

Superior Pictures, Inc.

Date 6 28 1937

By C. H. Miller,
Sales Director.

Directions to Salesmen:—While you have every right trade among prospective customers to obtain the best off possible for your product, after you have selected a pa ticular Exhibitor whose offer you believe to be the be obtainable and take a written application from such E hibitor, you are hereby directed to forward the applicati to the office of your company and make no further effo to sell the same service to any other Exhibitor direct competing with such Exhibitor until the application forwarded has been duly rejected, accepted or withdraw in accordance with its terms. A violation of this directi will subject you to discharge.

2979 Payment

Fifth: The Exhibitor agrees to pay for such license to each of such photoplays the fixed sums herein specifi at least four (4) days in advance of the date of shipme from the Distributor's Exchange or from the last previo exhibitor of the positive print thereof.

Protection and Run

Sixth: During the life of this contract the Distribut agrees not to exhibit or license the exhibition of any su photoplays in conflict with the "run" or "protecti period," if any, in the Schedule specified. Unless othe wise provided herein, such "protection period" shall computed from the last date of exhibition of each phot play as fixed herein. If "protection" is granted hereund against a specified theatre or theatres which "protection shall indicate that it was the intention of the Distribut to grant such "protection" against all of the theatres the immediate neighborhood or vicinity of the Exhibitor theatre, then, unless otherwise provided in the Schedul such "protection" shall be deemed to apply to and inclu any theatre that may hereafter be opened in such neig borhood or vicinity.

Delivery and Return of Prints, Records, and Discs

Seventh: The Distributor agrees to deliver to the E hibitor during the period specified in Article Secon hereof or otherwise in the Schedule provided for a positiv print with recorded sound for exhibition and reproductio

of each of such photoplays for exhibition and reproduction at the said theatre on the dates specified or on the dates determined as herein provided. Delivery of such positive prints by the Distributor to the Exhibitor at the Distributor's exchange or to a common carrier or to the United States postal authorities for mailing or to any agent of the Exhibitor shall be deemed delivery by the Distributor to the Exhibitor hereunder.

All deliveries other than at the Distributor's exchange shall be made in time to enable the carrier thereof in accordance with the carrier's schedule to deliver to the Exhibitor or at the place where the Exhibitor's theatre is located prints at least one hour before the usual time for the opening of the Exhibitor's theatre.

The Exhibitor agrees to return each positive print received by the Exhibitor hereunder, with the reels, containers, records, discs, or other similar devices therewith, to the exchange of the Distributor from which the Exhibitor is served or as otherwise directed by the Distributor immediately after the last exhibition of such positive print, in the same condition as when received by the Exhibitor, reasonable wear and tear due to the proper use thereof excepted. The Exhibitor agrees to pay all cost of transportation of such positive prints, reels, containers, records, discs, or other similar devices from the Distributor's exchange or the last previous exhibitor having possession of any such positive prints (as the case may be) and return to the Distributor's exchange; or if directed by the Distributor, to ship such positive prints, records, discs and or other similar devices elsewhere than to the Distributor's exchange transportation charges collect. It is agreed that the delivery of a positive print and or any records, discs or other similar devices properly directed and packed in the container furnished by the Distributor thereof, to a carrier designated or used by the Distributor and proper receipt therefor obtained by the Exhibitor, shall constitute the return of such positive print and or any records, discs, or other similar devices by the Exhibitor.

If the Exhibitor fails to or delays the return of any positive print and or any records, discs, or other similar devices to the Distributor or fails to forward or delays forwarding (as directed by the Distributor) any such print and or any records, discs, or other similar devices to any other exhibitor, the Exhibitor agrees to pay the Distribu-

tor the damage, if any, so caused the Distributor and in addition the damage, if any, so caused such other exhibitor.

Selection or Designation of Play Dates

Eighth: The exhibition date or dates of each photoplay, unless definitely specified or otherwise provided for in this Schedule, or otherwise agreed upon, shall be determined as follows:

1. The Distributor shall mail to the Exhibitor at least fifteen days' notice in writing of the date upon which each photoplay will be available for exhibition by the Exhibitor, consistent with prior runs and or protection heretofore or hereafter granted to other exhibitors (which date is hereinafter referred to as "the available date"). Such notice shall be of no effect unless prints of such photoplay are in the exchange of the Distributor from which the Exhibitor is served.

2. Within fourteen days after the mailing of such notice, the Exhibitor shall select an exhibition date or dates within a thirty day period commencing with such available date, by giving written notice to the Distributor of the date or dates so selected.

If the exhibition date or dates so selected by the Exhibitor are not open for the Exhibitor, then the exhibition date or dates shall be designated as provided in the following paragraphs "A" and "B":

(A) If other dates within said thirty day period are open the Exhibitor shall immediately select from such other open dates another date or other dates, failing to do so, then the Distributor shall designate the date or dates which shall be within a period not earlier than two weeks nor later than six weeks from the date first selected by the Exhibitor, by mailing fourteen days' notice thereof to the Exhibitor.

(B) If no other date or dates within said thirty days period are open (after the Exhibitor's written request therefor) then the Exhibitor shall designate the date or dates which shall be within a period not earlier than two, nor later than six weeks from the last date of the said thirty day period, by immediately giving written notice thereof to the Distributor. If the Exhibitor fails to immediately designate such date or dates, as provided in this paragraph "B," the Distributor shall designate the date or dates within the same period by mailing to the Exhibitor fourteen days' notice of such date or dates.

If the Exhibitor fails to make any selection within fourteen days after the mailing of the available dates of any photoplay, then the Distributor may at any time designate the exhibition date or dates thereof, which date or dates shall not be prior to the available date, by mailing notice thereof at least fourteen days before such exhibition date or dates; and if any such photoplay shall have been exhibited by any other exhibitor having a "run" prior in point of time and immediately preceding the "run" specified in the Schedule granted to the Exhibitor, then the Distributor shall designate the exhibition date or dates thereof, which shall be within a period of forty-five days commencing with the available date. In case the exhibition date or dates of any of the photoplays shall be designated by the Distributor pursuant to this paragraph, the period of protection," if any, specified in the schedule, shall begin upon the fifteenth (15th) day of the thirty-day period specified in paragraph 2 of this Article.

3. The exhibition date or dates of any of the photoplays selected by the Exhibitor (if available), or designated as in this Article Eighth provided, or otherwise agreed upon between the Distributor and the Exhibitor, shall be for all purposes the exhibition date or dates of such photoplays as though definitely specified in the Schedule.

4. In case this contract embraces a series of feature photoplays, five reels or more, in length and featuring a particular star or director, the exhibitor shall not be required hereunder to exhibit more than one photoplay of any such series every five weeks.

Loss of and Damage to Prints, Records and Discs

Ninth: The Exhibitor shall pay to the Distributor a sum equal to the cost of replacement at the Distributor's exchange for each linear foot of any positive print and for all records, discs or other similar devices lost, stolen or destroyed or injured in the interval between the delivery thereof by the Distributor and the return thereof by the Exhibitor in full settlement of all claims for such loss, theft, destruction or injury. Such payment, however, shall not transfer title to or any interest in any such positive print, records, discs or other similar devices to the Exhibitor or any other party, nor release the Exhibitor from liability arising out of any breach of this contract. The Distributor shall at the option of the Exhibitor repay or

credit to the Exhibitor any sums paid by the latter for lost or stolen prints, excepting "news reels," upon their return to the Distributor within sixty (60) days after the date when the same should have been returned hereunder. The Exhibitor shall not be liable for the damage or destruction of any positive print, records, discs or other similar devices, provided the Exhibitor establishes such damage or destruction occurred while in transit from the Exhibitor. The Exhibitor shall immediately notify the Distributor's exchange by telegram of the loss, theft or destruction of or damage or injury to any positive print, records, discs or other similar devices. If any positive print, records, discs, or other similar devices shall be received from the Exhibitor by the Distributor or any subsequent exhibitor in a damaged or partially destroyed condition it shall be deemed to have been so damaged or destroyed by the Exhibitor unless the latter, prior to the second public exhibition thereof shall have telegraphed the Distributor's exchange that such print and or records, discs or other similar devices were received by the Exhibitor in a damaged or partially destroyed condition, and setting forth fully the nature of such damage and the amount of footage (or number of records or discs) so damaged or destroyed.

Assignment Upon Sale of Theatres

Tenth: This contract shall not be assigned by either party without the written acceptance of the assignee and the written consent of the other party; provided, that if the Exhibitor sells or disposes of his interest in the theatre hereinafter specified, he may assign this contract to the purchaser of such interest without written consent of the Distributor and such assignment shall become effective upon the written acceptance thereof by the assignee; such assignment, however, shall not relieve the Exhibitor of liability hereunder, unless the Distributor consents in writing to release the Exhibitor from such liability.

Exhibition and Advertising

Eleventh: The Exhibitor agrees to run photoplays (excepting "news reels" as delivered without alteration, excepting with the written or telegraphic approval of the Distributor, subject to requirements of duly authorized public authorities necessitating any change. The Exhibi-

tor also agrees to advertise and announce each photoplay as a "Superior Pictures, Inc." In all newspaper advertising and publicity issued by the Exhibitor relating to said photoplays the Exhibitor shall adhere to the form of announcement contained in the advertising matter issued by the Distributor.

All advertising accessories used by the Exhibitor in connection with the exhibition and reproduction of said photoplays must be leased from or through the Distributor and must not be sold, leased or given away by the Exhibitor.

Unless this contract expressly provides for the "First Run" in the City or Town wherein the theatre hereinafter specified is located, the Exhibitor agrees not to advertise any of the photoplays herein provided for by means of lithographs, slides, trailers, lobby displays, newspaper announcements, advertising or otherwise prior to and until after the completion of the exhibition of such photoplay by any other exhibitor having the right of the "first run" thereof in said City or Town.

The Distributor shall not in any wise be liable for any breach of the provisions of the immediately preceding paragraph contained in any other exhibition contract with any other exhibitor.

Taxes

Twelfth: The Exhibitor agrees to pay to the Distributor upon demand any tax, fee or other like charge now and or hereafter imposed or based upon the delivery and or the exhibition and or reproduction of positive prints and or any records, discs or other similar devices of the photoplays and or upon the sums payable under this contract by the Exhibitor to the Distributor. If under any statute or ordinance any such tax, fee or other like charge is or shall be payable or paid by the Distributor and the exact amount payable hereunder by the Exhibitor is not therein definitely fixed or cannot be exactly determined then the Exhibitor agrees to pay such part of any such tax, fee or other like charge, paid or payable by the Distributor as shall be fixed in the manner determined by the then President of the American Arbitration Association.

Minimum Admission Charge

Thirteen: The Exhibitor warrants and agrees that during the period each of the photoplays herein provided for shall be exhibited in said theatre the Exhibitor will charge for admission to said theatre an actual admission fee which shall not be less than ten cents, unless a greater minimum admission charge is herein elsewhere specified, for each exhibition and that such photoplays shall not be exhibited unless such admission fee is charged.

Percentage Bookings

Fourteenth: If this contract calls for payment of any part thereof computed upon the Exhibitor's gross receipts such payment or any part thereof shall be made daily together with a correct itemized statement of the gross receipts of said theatre for admission thereto upon the exhibition date or dates of each photoplay for which payment is so required to be made. Should the Distributor so require, such itemized statement shall be made upon forms furnished by the Distributor. Upon such date or dates an authorized representative of the Distributor is hereby given the right to verify the sale of all tickets of admission to said theatre, and the receipts therefrom; and for such purposes shall have access to the theatre, including the box office, and also the right to examine the Exhibitor's books and records insofar as they relate to such gross receipts. The Distributor, or its authorized representative, shall also have access for a period of sixty (60) days after the receipt by the Distributor of the final box office statement, to all of the Exhibitor's books and records for the purpose of verifying such box office statement. The Distributor agrees that any information obtained by it pursuant to the provisions of this Clause will be treated as confidential, except in any arbitration proceeding or litigation in respect of this contract. The Distributor agrees, unless such representative be a regular employee of the Distributor, not to employ as such representative any person resident of or employed in the place where the Exhibitor's theatre is located, excepting with the consent of the Exhibitor.

Liquidated Damages, Percentage Bookings

Fifteenth: If the license fee of any photoplay licensed hereunder is to be computed either in whole or in part, upon a percentage of the gross admission receipts of said theatre, and if the Exhibitor fails or refuses to exhibit such photoplay as provided in this contract, the Exhibitor shall pay to the Distributor as liquidated damages for each day that the Exhibitor fails or refuses to exhibit such photoplay (in addition to any fixed sums payable hereunder in respect of such photoplay) a sum equal to such percentage of the average daily gross receipts of such theatre during the period of thirty (30) operating days immediately prior to the date or dates when such photoplay should have been so exhibited, provided, however, that if the Exhibitor shall exhibit such photoplay for less than the full number of days provided for in this contract, such sum equal to such percentage shall be computed, upon a sum equal to seventy-five per cent (75%) of the gross receipts of said theatre for the last day of the exhibition thereof of such photoplay.

Sixteenth: If, prior to the expiration of the term of this agreement, a standard license agreement shall be adopted generally by the Distributors and Exhibitors, then and in that event and on and after the date of the adoption of such standard license agreement, the terms and provisions therein contained relating solely to arbitration shall be deemed incorporated herein with the same force and effect as if herein fully set forth.

Delay In Or Prevention of Performance

Seventeenth: In case the Exhibitor shall be delayed in or prevented from the performance of this contract with respect to any of the photoplays herein specified by reason of censor rulings, the elements, accidents, strikes, fire, insurrection, acts of God, the public enemy, public calamity or order of any Court of competent jurisdiction, then such delay or failure of performance with respect to such photoplays shall be excused and all claims or causes of action for damages therefor, or arising therefrom, are hereby expressly waived by the Distributor. In any such event, the time of the Exhibitor to perform this contract with respect to any such photoplay shall be extended for a period equal to the time of such delay, unless performance

thereof because of the happening of any such cause or contingency is rendered impossible, in which case performance by the Exhibitor with respect to any such photoplay shall be waived. The resumption of performance by the Exhibitor shall begin promptly after the removal or abatement of the contingencies or causes of such disability or prevention of performance, provided, that if such delay and/or prevention of performance, caused as aforesaid, shall continue for a period of three (3) months either party hereto may cancel this contract, but only with respect to any such photoplay the exhibition hereunder of which has been so delayed or prevented, by sending after the expiration of such three (3) months period to the other party notice in writing to such effect.

In case the Distributor shall be delayed in or prevented from the performance of this contract with respect to any of the photoplays herein specified by reason of the elements, accidents, strikes, fire, insurrection, acts of God, the public enemy, public calamity, Court orders, censor rulings, delays of any common carrier, or of the United States Postal authorities; delays in production or failure of the producers of any such photoplays to make or deliver them to the Distributor or of any star or other performer to appear therein in time for delivery as herein provided, then such delay in or prevention of performance shall be excused and all claims or causes of action for damages therefor or arising therefrom are hereby expressly waived by the Exhibitor. In any such event, the time of the Distributor to perform this contract with respect to any such photoplay shall be extended for a period equal to the time of such delay; provided, however, that in case any such delay or prevention shall prevent the Distributor from "generally releasing" any such photoplay during the period specified in paragraph (b) of Article Second, the provisions of such paragraph shall govern, unless performance because of the happening of any such cause of contingency is rendered impossible, in which case performance by the Distributor with respect to any such photoplay shall be waived. The resumption of performance by the Distributor shall begin promptly after removal or abatement of the contingencies or causes of such disability or prevention of performance and the Distributor shall deliver to the Exhibitor any such photoplay at the earliest available date thereafter, and such delivery in any such

case shall be with the same force and effect as though delivery took place within the period herein above limited and the Exhibitor agrees to accept, pay for and exhibit and reproduce in the manner herein provided any such photoplay at such later period pursuant to the terms hereof.

Roadshows

Eighteenth: The Distributor shall have the right to exhibit and or cause to be exhibited as a "roadshow," at any time prior to the exhibition thereof hereunder, such of the photoplays licensed hereunder as the Distributor may from time to time select and determine, provided, however, that such roadshow exhibitions shall be at theatres at which admission prices for evening performances, during such exhibition thereof, of not less than one dollar shall be charged for the majority of the orchestra seats; and further provided that, except in the cities of New York and Los Angeles, not more than two of such photoplays shall be so roadshown.

If any such roadshow exhibition shall be in the city of New York, N. Y., and if the Exhibitor's theatre be situated in a territory then served by the Distributor's exchange or exchanges located in said City, the Distributor shall have the right to except and exclude from this license any such photoplay (not exceeding in the aggregate two of such photoplays) so roadshown in said City upon sending written notice to that effect to the Exhibitor not later than eight weeks after the commencement of such roadshow exhibition in such City, provided the Distributor shall by like notice except and exclude such photoplay from all other contracts containing this clause and licensing the exhibition of such photoplay in such territory. Such exception and exclusion shall not be affected in case the Distributor shall inadvertently omit to send such notice to any of such other exhibitors.

If any such roadshow exhibition shall be in the city of Los Angeles, Cal., and if the Exhibitor's theatre be situated in the territory then served by the Distributor's exchanges located in said City, the Distributor shall have the right to except and exclude from his license any such photoplay (not exceeding in the aggregate two of such photoplays) so roadshown in said City, upon the same terms and conditions above provided for the exception

and exclusion of photoplays roadshown in the city of New York.

If and when any such roadshow exhibition (except any roadshow exhibition in New York and or Los Angeles) shall be in the territory served by the Distributor's exchange or exchanges serving the Exhibitor's theatre, such photoplay so roadshown in such territory shall forthwith be excepted and excluded from this license. The Distributor shall send written notice to that effect to the Exhibitor within fourteen (14) days after such roadshow exhibition commences.

The Distributor may so exercise such right to except and exclude any such photoplay from time to time, in the respective territories, as above defined, in the United States. Any photoplay so roadshown in any place in the United States, and not excepted and excluded from this license as aforesaid, shall not be deemed available for exhibition hereunder until after the completion of such roadshowing of such photoplay in the United States, and such photoplay shall be exhibited hereunder as and when available.

The Distributor may exhibit and or license the exhibition of any and all photoplays excepted and excluded from this license by the Distributor as aforesaid, when and where desired by it, free from all claims of the Exhibitor in respect thereof.

Acceptance of Application

Nineteenth: This instrument shall be deemed an application for a license under copyright only and shall not become binding until accepted in writing without alteration or change by an officer or by any person duly authorized by the Distributor and notice of acceptance sent to the Exhibitor as herein provided. The deposit by the Distributor of any check or other consideration given by the Exhibitor at the time of application as payment on account of any sums payable hereunder or the delivery of any print or records, discs or other similar devices of any of the photoplays or the furnishing of any advertising accessories shall not be deemed an acceptance hereof by the Distributor.

Unless notice of acceptance of this application by the Distributor is sent to the Exhibitor by mail or telegraph within the number of days after the date thereof herein

after specified (immediately following the name of the city wherein is situated the exchange of the Distributor from which the Exhibitor is served, or if such city is not hereinafter named then within the number of days specified immediately following the city hereinafter named nearest thereto) said application shall be deemed withdrawn and the Distributor shall forthwith return any sums paid on account thereof by the Exhibitor. Albany 10; Atlanta 20; Boston 10; Buffalo 10; Charleston 15; Charlotte 15; Chicago 15; Cincinnati 20; Cleveland 15; Dallas 30; Denver 20; Des Moines 45; Detroit 15; Indianapolis 15; Jacksonville 15; Kansas City 15; Los Angeles 25; Little Rock 15; Louisville 15; Memphis 20; Milwaukee 15; Northern New Jersey 7; Minneapolis 20; Butte 30; New Haven 10; New Orleans 15; New York City 7; Oklahoma City 20; Omaha 20; Peoria 15; Philadelphia 10; Pittsburgh 14; Portland, Ore., 30; St. Louis 15; Salt Lake City 30; San Francisco 25; Seattle 30; Washington, D. C., 14.

This application and any application for other photoplays of the Distributor executed by the Exhibitor at the same time shall, for the purpose of this Article only, be deemed one application unless an agreement to the contrary contained in the Schedule is specifically signed by the Exhibitor.

A copy of this application, signed by the Exhibitor, shall be left with the Exhibitor at the time of signing, and in the event of acceptance thereof as above provided, a duplicate copy, signed by the Distributor, shall be forwarded to the Exhibitor.

Waiver

Twentieth: The waiver by either party of any breach or default by the other party shall not be construed as a waiver of any other or subsequent breach or default by such other party.

Verbal Promises: Representations

Twenty-first: This Contract is complete and no promises or representations have been made by either party to the other except as set forth herein.

2979 The following is Film License Agreement between Republic Pictures and Jackson Park Theatre dated November 28, 1939, from Pl. Ex. 36:

(Filed Oct. 11, 1944. Roy H. Johnson).

2980 Exchange: Chicago,

Theatre: Jackson Park,
Town and State: Chicago, Ill.

Exhibitor's Approved Copy

Contract No. 39-242
Salesman W. Linrau
Sales Control Page No. 19 Line No. 22

Republic Pictures Schedule.

For the license to exhibit each of said motion pictures, the exhibitor shall pay to the distributor the following rental.

No. and Description of Pictures Licensed	Consecutive days run	Guaranteed License Fee (per picture)
4 De Luxe Adventures	2-3	40.00
10 Dramas	2-3	25.00

A minimum of of the motion pictures licensed hereunder, to be designated by the Distributor, shall each be played by the Exhibitor for consecutive days, in lieu of the number of consecutive days specified in the above schedule, at the Theatre, and are to have a opening at said theatre. Such designation shall be made by the Distributor with respect to each motion picture, by written notice to the Exhibitor, at or before the time Distributor gives notice to the Exhibitor of the availability of such motion picture.

Run—Clearance—Additional Provisions
1st Week of Gen. Release

Release Year of Product Sold 1939-40

Number of motion pictures offered 50. Number of motion pictures licensed 14.

Admission Prices—The Exhibitor during the whole of the licensed exhibition period of each of the motion pic-

tures exhibited hereunder agrees to and shall charge for admission to said theatre the following prices:

Matinee: Adults, orchestra 20, balcony ....., Children, orchestra balcony 10.

Evening: Adults, orchestra 30, balcony , children, orchestra balcony 10.

If during any such period less than said admission prices is charged, the Distributor in addition to all other rights hereunder shall have the right: (a) to immediately terminate the license of the motion picture then being or about to be exhibited, by written notice to such effect to the Exhibitor and upon the giving of such notice, the license of such motion picture shall forthwith terminate and revert to the Distributor; and or (b) provided the Exhibitor is granted herein a period of "clearance" to reduce such period by not to exceed one-half in respect to each of the motion pictures thereafter deliverable hereunder; and or (c) if no period of clearance is specified in the Schedule to withhold for a period not to exceed sixty (60) days notice of the date when each motion picture thereafter deliverable hereunder will be available for exhibition by the Exhibitor; and as to each such motion picture the "run" thereof, if any, granted the Exhibitor, shall be deemed revoked and the Exhibitor agrees to exhibit each such motion picture after notice of the available date thereof upon the date or dates determined as provided in Clause Sixth hereof.

The Exhibitor agrees to play and/or pay for not less than 1 features licensed hereunder per Month commencing when ordered westerns licensed hereunder per commencing and chapters of each serial licensed hereunder per week commencing , if and as available, in order of release, until all motion pictures licensed hereunder are exhibited and/or paid for. It is further agreed that each chapter of each serial shall be played in consecutive order and that immediately following the playing of the last chapter of a serial, the Exhibitor shall play the first and succeeding chapter of the next serial available.

Designation—Twenty-Second: The pictures to be included in each of the groups of pictures above named, shall be such pictures which the Distributor, in its sole discretion, shall allocate to each such group. It is understood that

the pictures to be included in each such group, have not, at the time of the execution of this agreement, been allocated or designated; and that the above groups do not contain any allocation or designation of any particular motion pictures licensed hereunder. Such allocation and designation shall be made by the Distributor in respect to each motion picture by written notice thereof to the Exhibitor at or before the time Distributor gives notice to the Exhibitor of the availability of each such motion picture. In event that the "guaranteed license fee" and or the "Distributor's Share of Gross Receipts per Picture" above provided shall not be the same with respect to all of the pictures licensed hereunder in any of the aforesaid groups, the Distributor shall, in its sole discretion, designate which of the "guaranteed license fees" and or "Distributor's Share of Gross Receipts per Picture" above provided, shall be applicable to, and paid to, and paid by, the Exhibitor with respect to each picture in such group licensed hereunder.

Interchange—Twenty-Third: The film rental herein specified, with respect to each respective motion picture licensed hereunder, shall not be subject to reduction in any event. The Distributor, in its sole discretion, may interchange the film rentals hereinabove specified with respect to each or any of said motion picture or motion pictures, with the film rentals hereinabove specified with respect to any other motion picture or motion pictures licensed hereunder in the same or any other group above referred to. Such right to interchange shall be exercised by the Distributor with respect to each motion picture, by written notice thereof to the Exhibitor, at any time before the exhibition thereof by the Exhibitor.

The term Distributor, as used herein, shall mean Republic Pictures Corporation of Illinois a corporation organized under the laws of the State of Illinois
or its assignee; and the term Exhibitor, as used herein, shall mean Jackson Park Theatre or its assignee.

In Witness Whereof, the Exhibitor, operating the Jackson Park Theatre, located at 6711 Stony Island Ave. in Chicago, Ill. has on Nov. 28, 1939 executed this application, which upon written acceptance thereof by the Distributor shall be deemed to be the license of the said Exhibitor for the exhibition of the motion pictures specified.

in the Schedule, but only at the said Theatre in accordance with the terms and conditions hereof.

Accepted:
Republic Pictures Corporation of Illinois.
Distributor.

By Ford,
Authorized Officer.

Date 12-5-39.

By (Illegible)
Partner Gen. Mgr. Officer (Indicate one)

2981 License Agreement.

Agreement of license under copyright made in one or more counterparts between the Distributor (hereinafter named, and referred to as the Distributor), party of the first part, and the Exhibitor, (hereinafter named and referred to as the Exhibitor, operating the theatre or theatres hereinafter designated), party of the second part.

Witnesseth: The parties hereto agree as follows:

License—First: The Distributor grants the Exhibitor and the Exhibitor accepts, a limited license under the respective copyrights of the motion pictures designated and described in the Schedule hereof (except the motion pictures which may be eliminated or excluded under clauses Fourteenth and Fifteenth hereof) and under the copyright of any matter included in any sound recorded therewith, to exhibit publicly said motion pictures and to reproduce for public performances such recorded sound in synchronism therewith, but only at the said theatre and for the number of consecutive days specified in the Schedule and for no other use or purpose; provided that the reproducing equipment in the said theatre will operate reliably and efficiently to reproduce such recorded sound with adequate volume and high quality; and provided further that if copyrighted musical compositions are included in such recorded sound, the Exhibitor will have at the date or dates of the exhibition of each of such motion pictures a license from the copyright proprietor thereof or from any Licensee of such copyright proprietor to perform publicly the said copyrighted musical compositions. If more than one theatre is hereinafter designated, the said motion

pictures are licensed for exhibition at only one of suc theatres unless otherwise in the schedule specifically pro vided in writing.

Term and Warranty—Second: (a) The term of th Agreement shall begin with the date fixed or determine for the exhibition at the said theatre of the first motio picture deliverable hereunder and shall continue for period of one year thereafter unless otherwise in t Schedule provided. The Distributor agrees during sa term to deliver to the Exhibitor, and the Exhibitor agre to exhibit at said theatre during said term upon the da or dates herein provided for, a positive print of each said motion pictures except such as may be excluded provided in Clauses Fourteenth and Fifteenth hereof. T Distributor warrants that each positive print will be good physical condition for projection and exhibition, a will clearly reproduce the recorded sound in synchroni therewith if properly used upon standard reproduci equipment.

Damages—Failure to Deliver—(b) If the Distribut shall fail or refuse to deliver, or the Exhibitor shall f or refuse to exhibit during the term hereof, any of sa motion pictures, excepting those which may be eliminat or excluded as provided in clauses Fourteenth and F teenth hereof, or if the Distributor shall willfully viol any of the provisions of Clause Seventh hereof or sh deliver to the Exhibitor a print of any motion pict which print shall be determined was not in condition exhibition and for the reproduction of sound as provid in Clause Second, the Exhibitor or the Distributor, as case may be, shall pay the damage so caused, and if su damage cannot be definitely computed shall pay as liq dated damages a sum equal to the fixed sum herein spe fied as the rental of each such motion picture, or a s computed as provided in Clause Third (d) hereof if rental of any such motion picture is to be determin either in whole or in part upon a percentage of the adm sion receipts of said theatre or any part thereof or u a percentage of such receipts and a fixed sum: provi that any claim by the Exhibitor with respect to the co tion of a print shall be deemed to have been waived by Exhibitor unless notice of such claim shall have been gi by the Exhibitor to the Distributor's exchange from wh the Exhibitor is served, by telephone or telegraph, or

person, immediately after the first public exhibition thereof by the Exhibitor and written confirmation thereof mailed by the Exhibitor upon the same day to the Distributor's said exchange. The Distributor shall not be in default hereunder, unless promptly after the Exhibitor has knowledge thereof, the Exhibitor shall notify the Distributor thereof in writing, and the Distributor shall promptly thereafter fail to cure, remedy or remove same.

Payment.—Third: (a) Exhibitor agrees to pay for such license as to each such motion picture the fixed sums specified in the Schedule at least three (3) days in advance of the date of delivery of a print thereof at the Distributor's exchange or of the date of shipment to the Exhibitor from another exhibitor, unless after the acceptance of this application by the Distributor such payment shall be otherwise agreed to by the Distributor in writing signed by an officer of the Distributor. All payments hereunder shall be made to the Distributor at the City in which is located the exchange from which the Exhibitor is served.

Trust Funds.—(b) Where this agreement calls for the payment of a fixed and definite license fee for any motion picture (that is to say, not based upon a percentage of the gross receipts) then in case payment is not made in advance of the exhibition of any such motion picture, the Exhibitor agrees that the Distributor shall receive its license fee for any such motion picture out of all admission receipts received during the exhibition of any such motion picture up to the amount due the Distributor and such admission receipts shall belong to and be the property of the Distributor when they are paid by the patrons and shall be held in trust for the Distributor until paid to the Distributor and the ownership of said trust found by the Distributor shall not be questioned whether the moneys are physically segregated or not and the Exhibitor agrees to keep such portion of the gross receipts as are payable to the Distributor hereunder, in a separate and distinct fund. In the event the admission fees received during the exhibition of said motion picture are not equal to the amount of the license fee due to the Distributor on account of such motion picture, the Exhibitor shall nevertheless remain and continue to be liable for the balance of the amount, if any, due and payable to the Distributor after the moneys kept in trust for the Distributor shall have been paid to the Distributor. With respect to motion

pictures licensed hereunder in whole or in part for a percentage of the Exhibitor's gross receipts derived from the exhibition of such motion pictures, the Distributor's share of the gross receipts due to the Distributor hereunder shall belong to the Distributor and shall be held in trust for the Distributor until paid to the Distributor; and the ownership of said trust fund by the Distributor shall not be questioned whether the moneys are physically segregated or not, and the Exhibitor agrees to keep such portion of the gross receipts as are payable to the Distributor hereunder, segregated and in a distinct fund.

Percentage Bookings—(c) If the rental of any of such motion pictures is to be determined either in whole or in part upon the admission receipts of said theatre or any part thereof, the Exhibitor agrees to pay such rental immediately after the last exhibition upon the last date of the exhibition of each such motion picture or if requested by the Distributor at the end of each day's exhibition. In each such case the Exhibitor shall deliver to the Distributor immediately after the last exhibition upon each date of exhibition of each such motion picture a correct itemized statement of the gross receipts of said theatre for admission thereto upon each such date. Such statement shall be signed by the Exhibitor or the Manager or Treasurer of said theatre and the Cashier thereof and shall include a statement of such facts and figures as may be provided in the Schedule to be furnished by the Exhibitor, and if requested by the Distributor, shall be made upon forms furnished by the Distributor. Upon the exhibition date or dates of each motion picture an authorized representative of the Distributor is hereby given the right to verify the sale of all tickets of admission to said theatre, and the receipts therefrom; and for such purpose shall have access to the theatre, including the box office, and also the right to examine all relevant entries relating to such gross receipts in all the Exhibitor's books and records, and if hereunder it is provided that the Exhibitor make certain expenditures and or deductions, to examine all entries relating to such expenditures and or deductions. Such right of access and examination of the Exhibitor's books and records limited as aforesaid, shall continue for a period of four (4) months after the receipt by the Distributor of each such statement. The Distributor agrees, unless such representative is in the continuous

employ of the Distributor or employed as a checker, not to employ as a representative for such purpose any person a resident of or employed in the place where the said theatre is located, other than a person engaged in business as an accountant. The Distributor agrees that any information obtained pursuant to the provisions of this clause will be treated as confidential, excepting in any litigation in respect to this license:

Liquidated Damages—Percentage Bookings—(d) If the Exhibitor fails or refuses to exhibit any of said motion pictures as herein provided and the rental of any part thereof is to be computed in whole or in part upon a percentage of the admission receipts of said theatre, the Exhibitor shall pay the Distributor, as liquidated damages for each day the Exhibitor fails or refuses to exhibit such motion pictures, in addition to any fixed sums payable hereunder in respect of such motion picture, a sum equal to such percentage of the average daily gross receipts of such theatre on each date any feature motion picture distributed by the Distributors was exhibited thereat during the period of ninety (90) days prior to the date or dates when said motion pictures should have been so exhibited hereunder, or if no feature motion picture distributed by the Distributor was exhibited at such theatre during said ninety (90) day period, then a sum equal to such percentage of the average daily gross receipts of such theatre during the period of thirty (30) operating days immediately prior to the date or dates when such motion pictures should have been exhibited, or prior to the date of such failure or refusal to exhibit any of said motion pictures; provided that if the Exhibitor shall exhibit such motion pictures for less than the full number of days provided for in the Schedule, for each day less than said full number of days, the sum equal to such percentage shall be computed upon a sum equal to sixty-five percent (65%) of the gross receipts of said theatre during the last day of the exhibition thereat of such motion picture. A sworn statement of the said daily gross receipts shall be delivered by the Exhibitor to the Distributor upon demand therefor.

Delivery and Return of Prints—Fourth: (a) After each of said motion pictures is generally released for public exhibition and becomes available for exhibition hereunder by the Exhibitor, the Distributor agrees to deliver as hereinafter provided, a print thereof to the Exhibitor.

(b) The public exhibition of any said motion pictures for three (3) consecutive days at prices usually charged for admission to the theatre where so exhibited in the territory wherein is located the exchange from which the exhibitor is served, excepting any "road show," "tryout," "preview," or "pre-release" exhibitions thereof, shall be deemed the general release for public exhibition of such motion picture, but only in such territory. A "pre-release" exhibition shall be deemed any exhibition because of seasonal conditions making desirable exhibitions in advance of general release as herein defined.

(c) The Exhibitor agrees to exhibit each of said motion pictures in the order of its general release by the Distributor in the exchange territory in which said theatre is located. The Exhibitor shall have the right to select any of the motion pictures, excepting the last deliverable hereunder, for exhibition out of the order of its general release, subject to prior runs and or clearances granted other exhibitors, on the date or dates determined as provided in Article Sixth hereof or otherwise agreed upon, but only upon the following conditions, (a) that the Exhibitor is not in default hereunder and shall have fully complied with all the provisions, if any, set forth in the Schedule for the exhibition of one or more of said motion pictures at specified intervals; and (b) that the Distributor and the Exhibitor shall then agree upon the date or dates upon which all of the motion pictures generally released prior to the general release of such motion picture and available for exhibition hereunder shall be exhibited by the Exhibitor, which date or dates shall be within thirty (30) days from the first exhibition date of the motion picture to be exhibited out of the order of the general release; or in the alternative the Exhibitor shall then pay to the Distributor the license fee for each of such motion pictures then generally released and available for exhibition hereunder, and as to any thereof which shall not be exhibited by the Exhibitor within thirty (30) days from the first exhibition date of the motion picture to be exhibited out of the order of its general release, the grant of the run and clearance period in respect thereof shall be deemed waived by the Exhibitor. Upon the failure or refusal of the Exhibitor to exhibit any of such motion pictures then generally released and available for exhibition hereunder within said thirty (30) day period or to pay

the license fee thereof, the right of the Exhibitor to thereafter select for exhibition any motion picture out of the order of its general release shall be forfeited. The provisions of this paragraph (c) shall not be deemed to limit or qualify the provisions of Article Sixth hereof excepting as in this paragraph (c) specifically provided.

(d) The Distributor shall make deliveries hereunder to the Exhibitor or to the Exhibitor's authorized agent, by delivery at the distributor's exchange, or to a common carrier, or to the United States Postal authorities. If deliveries are made to a carrier or to a post office, they shall be made in time for prints to reach the place where the said theatre is located in time for inspection and a projection thereof before the usual time for opening said theatre.

(e) Exhibitor agrees to return immediately after the last exhibition on the last date of exhibition licensed, each print received hereunder, with its reels and containers, to the exchange of the Distributor from which the Exhibitor is served or as otherwise directed by the Distributor in the same condition as when received, reasonable wear and tear due to proper use excepted. Exhibitor agrees to pay all costs of transportation of such prints, reels, and containers from the Distributor's exchange or the last previous exhibitor having possession of the same, and return to the Distributor's exchange; or if directed by the Distributor, to ship such positive prints elsewhere than to the Distributor's exchange transportation charges collect. It is agreed that the delivery of a positive print properly directed and packed in the container furnished by the Distributor therefor, to a carrier designated or used by the Distributor and proper receipt therefor obtained by the Exhibitor, shall constitute the return of such positive print by the Exhibitor.

(f) If Exhibitor fails to or delays the return of any positive print to the Distributor or fails to forward or delays forwarding (as directed by the Distributor) any such print to any other exhibitor, the Exhibitor agrees to pay the Distributor the damage, if any, so caused the Distributor and in addition the damage, if any, so caused such other exhibitor. The Exhibitor shall have the right to participate in any compromise of or intervene in any arbitration or legal proceeding based upon any claim for such damage asserted against the Distributor by another exhibitor; notice of which shall be given the Exhibitor by the Distributor.

Loss and Damage to Prints—Fifth: The Exhibito shall pay the Distributor a sum equal to the cost of re placement at the Distributor's exchange for each linea foot of any print lost, stolen or destroyed or injured i any way in the interval between the delivery to and th return thereof by the Exhibitor in full settlement of al claims for such loss, theft, destruction or injury. Suc payment, however, shall not transfer title to or any inter est in any such positive print to the Exhibitor or an other party, nor release the Exhibitor from any liabilit arising out of any breach of this agreement. The Dis tributor shall at the option of the Exhibitor repay or credi to the Exhibitor any sums paid by the Exhibitor for an lost or stolen print, upon the return of such lost or stole print to the Distributor within sixty (60) days after th date when the same should have been returned hereunde The Exhibitor shall not be liable for the damage or de struction of any print, provided the Exhibitor establishe such damage or destruction occurred while in transit fro the Exhibitor and delivery thereof was made as hereunde provided. The Exhibitor shall immediately notify the Di tributor's exchange by telegram of the loss, theft or d struction of or damage or injury to any print. If an print shall be received from the Exhibitor by the Distri utor or any subsequent exhibitor in a damaged or pa tially destroyed condition it shall be deemed to have bee so damaged or destroyed by the Exhibitor unless the la ter, immediately after the first public exhibition there shall have telegraphed the Distributor's exchange th such print was received by the Exhibitor in a damage or partially destroyed condition, and setting forth ful the nature of such damage and the amount of footage damaged or destroyed.

Selection of Play-Dates—Sixth: Unless otherwi agreed upon or unless definitely specified or otherwi provided for in the Schedule, the exhibition date or dat of each of said motion pictures shall be determined follows:

1. Subject to prior runs and or clearance granted hereafter granted by the Distributor to other exhibito and within a reasonable time after a print or prints any of said motion pictures are received at the exchan of the Distributor out of which the exhibitor is serve and provided the Exhibitor is not in default hereunde

the Distributor shall mail to the Exhibitor a notice in writing of the date when each such motion picture will be available for exhibition by the Exhibitor (which date is hereinafter referred to as the "available date"). Such notice shall be mailed to the exhibitor at least fifteen (15) days before the available date therein specified.

2. Within fourteen (14) days after the mailing of such notice, the Exhibitor shall select an exhibition date or dates not theretofore assigned to another exhibitor or other exhibitors, within the period commencing upon the available date and ending thirty (30) days thereafter and give to the Distributor written notice of the date or dates so selected.

3. Upon the failure of the Exhibitor to so select such date or dates the Distributor shall designate such date or dates by mailing written notice thereof to the Exhibitor.

Clearance and Run—Seventh: The Distributor agrees not to exhibit or grant a license to exhibit any of said motion pictures for exhibition in conflict with the "run" or prior to the expiration of the "clearance period", if any, in the Schedule specified at any theatre therein named or within the territorial limits therein specified. Such period of clearance as to each of said motion pictures shall be computed from the last date of the exhibition thereof licensed hereunder. If clearance is granted against a named theatre or theatres indicating that it is the intention of the Distributor to grant such clearance against all theatres in the immediate vicinity of the Exhibitor's theatre then unless otherwise provided in the Schedule, such clearance shall include any theatre in such vicinity thereafter erected or opened.

Description of Pictures—Eighth: (a) The Distributor, or the producer of any of the motion pictures licensed herein, shall have and hereby reserve the right in the sole discretion of the Distributor, or the producer thereof, to change the title of any of the said motion pictures, to make changes in, alterations and adaptation of any story, book or play and to substitute for any thereof any other story, book or play. The Distributor, or the producer thereof, also shall have and hereby reserves the right to change the director, the cast, or any member thereof, of any said motion pictures.

(b) The Exhibitor shall not be required to accept for any feature motion picture described in the Schedule as

that of a named star or stars, director or named well-known author, book or play, any motion picture of any other star or stars, director, author, book or play, nor to accept any other feature motion picture in place of any thereof which in the Schedule is designated "no substitute." The right of rejection conferred on the Exhibitor by this Clause is in addition to the right of exclusion provided in Clause Fifteenth hereof.

(c) The Distributor warrants that none of said motion pictures are reissues of old negatives, or old negatives retitled, excepting those specifically specified as such in the Schedule; and further that none of said motion pictures contains or will contain any advertising matter for which compensation is received by the Distributor, or any subsidiary or affiliate of the Distributor.

Advertising Prior to First Run—Ninth: (a) If the Exhibitor is granted a subsequent run of the said motion pictures the Exhibitor shall not advertise any thereof by any means of advertising prior to or during the exhibition of any one of said motion pictures by any other exhibitor having the right to a prior run thereof. Nothing in this Clause shall be deemed to prohibit the Exhibitor from advertising generally all of said motion pictures as a group but such general advertising shall not refer to any one of said motion pictures during its exhibition by any other exhibitor, having the first or immediately prior run thereof, excepting as herein provided.

(b) The Exhibitor shall not advertise by any means of advertising any of said motion pictures which may be roadshown by the Distributor and not excepted and excluded from this license, until after the completion of such roadshowing in the United States, and then only as permitted in paragraph (a) of this Clause.

(c) For a breach of the provisions of this Clause the Distributor shall have in addition to all other rights, the right to exclude from this license any motion picture advertised in violation of the provisions hereof by written notice to such effect mailed to the Exhibitor and upon the mailing of such notice the license of such motion picture shall terminate and revert to the Distributor, but without prejudice to any and all rights Distributor may have against Exhibitor on account of such breach.

(d) The Exhibitor also agrees that in all advertising and publicity it will announce each picture as a "Republic Picture."

Acceptance by Distributor—Tenth: Until accepted in writing by an officer of or any person authorized by the Distributor and notice of acceptance sent to the Exhibitor this instrument shall be deemed only an application for a license under Copyright, and may be withdrawn by the Exhibitor any time before such acceptance. Unless such notice of acceptance is sent the Exhibitor by mail or telegraph within fifteen (15) days after the date thereof, if the said theatre of the Exhibitor is located east of the Mississippi River, and within thirty (30) days after the date thereof if located west of said river, said application shall be deemed to have been withdrawn. The deposit by the Distributor of any check or other consideration given by the Exhibitor at the time of application as payment for any purpose or the delivery of a print of any of said motion pictures shall not be deemed an acceptance hereof by the Distributor.

Changes in Writing—Eleventh: This license agreement is complete and no promises or representations of any kind in reference thereto have been made by either party to the other, except as expressly set forth herein. No change or modification hereof shall be binding upon the Distributor unless in writing and signed by an officer of the Distributor.

Assignment—Twelfth: This license shall not be assigned by either party without the written consent of the other, except that this license may be assigned by the Distributor, without the consent of the Exhibitor, to Republic Pictures Corporation, a New York Corporation, or any firm or corporation designated by the latter, provided that such assignee shall assume the covenants of the Distributor hereunder to be performed from and after the date of any such assignment; and except further that if the Exhibitor sells the said theatre or transfers any interest therein and is not in default hereunder, the Exhibitor may assign this license to the purchaser of the theatre or of such interest without the written consent of the Distributor, but any such assignment shall not be valid or of any effect hereunder unless a written acceptance thereof by the assignee assuming the obligations of the Exhibitor shall be delivered to the Distributor. Any such assignment shall not release the Exhibitor from any liability hereunder unless such release from liability is consented to by the Distributor in writing.

Taxes—Thirteenth: The Exhibitor shall pay to the Distributor upon demand any tax, fee or other like charge now and or hereafter imposed or based upon the delivery and or the exhibition of prints of motion pictures and or upon the sums payable under this license by the Exhibitor to the Distributor. If under any statute or ordinance any such tax, fee or other like charge is or shall be payable or paid by the Distributor and the exact amount payable hereunder by the Exhibitor is not therein definitely fixed or cannot be exactly determined, then the Exhibitor shall pay such part of any such tax, fee or other like charge paid or payable by the Distributor as shall be fixed in the manner determined by the then President of the American Arbitration Association, or by any court.

Prevention of Performance—Fourteenth: If the Exhibitor shall be prevented from exhibiting or the Distributor from delivering any of the said motion pictures for causes beyond their direct control then license in respect to each motion picture shall terminate and revert to the Distributor without liability on the part of either party, provided reasonable written notice of such termination and the cause thereof is given. Anything herein to the contrary notwithstanding, if any motion picture or motion pictures licensed hereunder shall not, in any event, be generally released by the Distributor prior to June 30, 1940, such picture shall, at the option of said Republic Pictures Corporation, a New York Corporation, be excluded from this agreement and the license in respect thereof shall terminate without liability on the part of any party hereto or otherwise.

Option to Exclude if Group Licensed—Fifteenth: If, in this license agreement, the total number of motion pictures offered to the Exhibitor by the Distributor, at the time of signing hereof by the Exhibitor, shall have been licensed by the Distributor to the Exhibitor hereunder, and unless the Exhibitor is granted other rights to exclude pictures hereunder, the Exhibitor may exclude from this license agreement not to exceed 10% of the total number of the pictures licensed hereunder, upon the following conditions: (1) that the Exhibitor is not in default hereunder; (2) that the Exhibitor give the Distributor written notice of the Exhibitor's election to exclude a picture within fourteen days after date of mailing of notice of the availability of such picture to the Exhibitor; (3) and that

such right of exclusion shall be subject to the right of Distributor to substitute or interchange, as provided in Clause Twenty-Third hereof. In computing the number of pictures which may be excluded hereunder, fractions of more than one-half shall be regarded as one. Upon the exclusion of any picture, the license therefore and all rights thereunder shall terminate and revert to the Distributor.

First Run Exhibitions—Sixteenth: (a) If the Exhibitor is granted a first run of the said motion picture, the Exhibitor shall exhibit each of the feature motion pictures excepting those described in Paragraph (d) of this Clause within the period beginning with the date scheduled and announced by the Distributor for the general release of each feature motion picture in the territory wherein is located the exchange of the Distributor out of which the Exhibitor is served and ending one hundred and twenty (120) days thereafter, notwithstanding any provision of Clause Sixth hereof to the contrary. If the first exhibition date of any of the said motion pictures shall occur on a date later than ninety (90) days after its scheduled and announced general release date, then the period of clearance of such motion picture shall be reduced so as to expire one hundred and twenty (120) days after said scheduled date of its general release. If the Exhibitor is granted a first run of the said motion picture and the Exhibitor fails to exhibit any feature motion picture within said period of one hundred and twenty (120) days, the grant of the said first run and the clearance period in respect thereof shall be deemed waived by the Exhibitor and the license fee as to such feature motion picture shall thereupon forthwith become due and payable to the Distributor, with the right to the Exhibitor to exhibit such feature motion picture as hereinafter in Paragraph (c) of this Clause provided.

Second Run Exhibitions—(b) If the Exhibitor is granted a second run of the said motion pictures, and any other exhibitor having been granted the first run thereof immediately prior to such second run fails to exhibit any of the feature motion pictures, excepting those described in Paragraph (d) of this Clause within the said period of one hundred and twenty (120) days specified in Paragraph (a) of this Clause, the Exhibitor shall exhibit each such feature motion picture within the period beginning

with the date of the expiration of the said one hundred and twenty (120) days period and ending fourteen (14) days thereafter, notwithstanding any provision of Clause Sixth hereof to the contrary. If the Exhibitor is granted a second run of the said motion pictures and the Exhibitor fails to exhibit any feature motion picture within said fourteen (14) days period the grant of such second run and the clearance period, if any, in respect thereof shall be deemed waived by the Exhibitor and the license fee as to such feature motion picture shall thereupon forthwith become due and payable to the Distributor with the right to the Exhibitor to exhibit such feature motion picture as hereinafter in Paragraph (c) of this Clause provided.

Subsequent Runs Exhibitions—(c) If the Exhibitor is granted a run subsequent to a second run of the said motion pictures and any other Exhibitor having been granted the second run thereof immediately prior to such subsequent run fails to exhibit any of the feature motion pictures, excepting those described in Paragraph (d) of this Clause within the said period of fourteen (14) days specified in Paragraph (b) of this Clause the Exhibitor shall exhibit each feature motion picture within the period beginning with the date of the expiration of the said fourteen (14) day period and ending seven (7) days thereafter notwithstanding any provision of Clause Sixth hereof to the contrary. If the Exhibitor is granted a run subsequent to a second run of the said motion pictures and the Exhibitor fails to exhibit any feature motion picture within said seven (7) day period, the grant of such subsequent run and the clearance period if any in respect thereof shall be deemed waived by the Distributor and the license fee as to such feature motion picture shall thereupon forthwith become due and payable to the Distributor with the right to the Exhibitor to exhibit such feature motion picture as hereinafter in Paragraph (c) of this Clause provided.

Extended runs—(d) Any of the motion pictures which shall have been exhibited at any theatre in the said territory for more than one show week prior to the run granted the Exhibitor shall be excepted from the provisions of this Clause and of Paragraph (b) of Clause Fourth.

Exhibition After Revocation of Run and Clearance—(e) Upon the waiver of the grant of the run and/or the clearance period of any feature motion picture as provided in

Paragraph (a), (b) or (c) of this Clause, the Exhibitor upon payment of the sum or sums payable hereunder as provided in this Clause for the license to exhibit such feature motion picture, shall have the right to exhibit the same hereunder upon a date or dates not in conflict with any run and or clearance period granted or hereafter granted to other exhibitors, upon written request mailed or delivered to the Distributor within sixty (60) days after the last date upon which such feature motion picture should have been exhibited by the Exhibitor as provided in this Clause. Failing to make such request within said period of (60) days the license to exhibit such feature motion picture granted hereunder shall terminate and revert to the Distributor.

Default by Exhibitor—Seventeenth: (a) If the Exhibitor shall fail or refuse to pay the rental of any such motion picture or motion pictures as provided in this license, or to furnish statements of the receipts of said theatre, if any are required hereunder, or to give the Distributor's representative access to the said theatre, or its box-office, and or the Exhibitor's books and records relative to motion pictures, the rentals of which are based upon the said theatre's admission receipts as herein provided, or if the Exhibitor shall exhibit or permit the exhibition of any of said motion pictures at any time or place other than as herein specified, or if the Exhibitor shall in any other respect fail, neglect or refuse to pay, keep or perform any of the obligations, terms, covenants, conditions or provisions hereof, or of any other exhibition contract between the parties hereto, or if the Exhibitor shall become insolvent, or be adjudicated a bankrupt, or shall execute an assignment for the benefit of his creditors, or if a receiver is appointed for any of the property of the Exhibitor, or if the Exhibitor voluntarily or by operation of law should lose control of said theatre, or of his interest therein, making it impossible for the Exhibitor to exhibit the said motion pictures at said theatre in accordance with the provisions hereof, then upon, or at any time after, the happening of any one or more of said events, the Distributor may, at its option, (1) terminate this license agreement, or, (2) suspend the delivery of additional motion pictures hereunder until each and all such default or defaults, event or events, shall be remedied, cured or removed; and it is understood that any such

termination of this license agreement by the Distributor shall be without prejudice to the liability of the Exhibitor for any moneys then owing to the Distributor or which may grow due to the Distributor with respect to all motion pictures licensed or agreed to be licensed hereunder, not then exhibited and or paid for hereunder, irrespective of the time of payment thereof herein provided; and all such moneys owing or to grow due shall, at the option of the Distributor, be immediately payable by Exhibitor to the Distributor. The exercise of any of said remedies or the taking of any of such actions by the Distributor shall be in addition to, and without prejudice to, any other right or remedy which the Distributor may have against the Exhibitor, at law or in equity, or otherwise, hereunder.

(b) Performance by the Exhibitor of each of the covenants herein contained on its part to be performed shall be a condition precedent to the performance by the Distributor of the covenants, or any of them herein contained on its part to be performed. Exhibitor hereby expressly grants Distributor the further right to demand and receive as a condition precedent to delivery of the print or prints of any motion picture licensed hereunder, payment of all amounts then due to Distributor from Exhibitor on account of any other motion pictures licensed to Exhibitor under this or any other exhibition contracts between the parties hereto, and the Distributor may require payment of all said sums to be made cash on delivery of any such print or prints.

(c) It is agreed that in the event that any suit is instituted under this contract, that the Courts of New York shall have jurisdiction over the parties to this contract, irrespective of their place of residence, place of business or their business activities in New York, so long as personal service has been effected upon an officer or managing agent of the defendant, within the territorial jurisdiction of the Court in which the action is instituted.

Cutting or Alteration of Prints—Eighteenth: The Exhibitor shall exhibit each print in its entirety and shall not copy, duplicate, subrent or part with possession of any print. The Exhibitor shall not cut or alter any print, excepting to make necessary repairs thereto, or when required by any duly constituted public official or authority or with the written or telegraphic consent of the Distributor.

Midnight Shows—Nineteenth: The license herein grant-

ed for the number of days specified in the Schedule shall not include the right of exhibition at any time previous to dawn of the first licensed and booked date of exhibition without securing written permission hereunder.

Roadshows. Twentieth: (a) The Distributor shall have the right to exhibit and or cause to be exhibited as a "roadshow," at any time prior to the exhibition thereof hereunder, such of the motion pictures licensed hereunder as the Distributor may from time to time select and determine, provided, however, that such roadshow exhibitions shall be at the theatres at which admission prices for evening performances during such exhibition thereof, of not less than one dollar shall be charged for the majority of the orchestra seats, and further provided that, except in the cities of New York and Los Angeles, not more than two of such motion pictures shall be so roadshown.

(b) If and when any such roadshow exhibition shall be in the City of New York and or the City of Los Angeles, and if the Exhibitor's theatre is situated in the territory then served by the Distributor's exchange or exchanges located in New York or Los Angeles, as the case may be, the Distributor shall have the right to except and exclude from this license not to exceed two (2) of such motion pictures so roadshown in each or both of said territories, upon sending to the Exhibitor written notice of such effect not later than four (4) weeks after the commencement of such roadshow exhibition and provided that the Distributor shall by like notice except and exclude such motion picture from all other license agreements containing this Clause and licensing the exhibition of such motion pictures in such territory. The exception and exclusion of any such motion picture in the territory then served by the Distributor's exchange or exchanges located in the City of Los Angeles, or in the City of New York, as the case may be, shall not be deemed to require the Distributor to except and exclude the same motion picture in both of said territories.

(c) If and when any such roadshow exhibition, excepting those in the City of New York and or in the City of Los Angeles, shall be in the territory served by the Distributor's exchange or exchanges serving the Exhibitor's theatre, the Distributor shall have the right to except and exclude from this license not to exceed two (2) of such motion pictures so roadshown upon sending to the Exhib-

itor written notice to such effect within seven (7) days after the commencement of such roadshow exhibition and provided that the Distributor shall by like notice except and exclude each such motion picture from all other license agreements containing this Clause and licensing the exhibition of such motion picture in such territory.

(d) The inadvertent omission to send to any of such other exhibitors the notice provided for in Paragraphs (a) and (b) of this Clause shall not be deemed to affect the exception and exclusion from this license of any such motion picture.

(e) The Distributor may so exercise such right to except and exclude any such motion picture from time to time, in the respective territories, as above defined, in the United States. Any motion picture so roadshown in any place in the United States, and not excepted and excluded from this license as aforesaid, shall not be deemed available for exhibition hereunder until after the completion of such roadshowing of such motion picture in the United States, and such motion picture shall be exhibited hereunder when generally released by the Distributor and as and when available for exhibition by the Exhibitor, and the term of this license agreement specified in Clause Second shall be in respect to each such motion picture extended to and including the date or dates of such exhibition by the Exhibitor hereunder of each thereof.

(f) For each motion picture that the Distributor shall except and exclude, as aforesaid, the Exhibitor is hereby granted the option to except and exclude from this license (in addition to those which may be excluded as provided in Clause Fifteenth) one of the other motion pictures licensed hereunder, but only if the Exhibitor shall give to the Distributor written notice to such effect not later than fourteen (14) days before the date fixed for the exhibition hereunder of such other motion picture. The Distributor may exhibit and or license the exhibition of any and all motion pictures excepted and excluded from this license by the Distributor and or the Exhibitor, under any of the Clauses of this agreement, when and where desired by the Distributor, free from all claims of the Exhibitor in respect thereof and the license of each thereof shall forthwith upon exclusion as herein provided terminate and revert to the Distributor.

Twenty-First: The following Schedule and all of the written and printed parts thereof are a part of this license

(continued on reverse side).

2982 (Filed Oct. 11, 1944. Roy H. Johnson, Clerk.)

The following is Film License Agreement between Gaumont British Picture Corporation of America and Jackson Park Theatre dated October 13, 1938, from Pl. Ex. 36:

2983 Form 1

Gaumont British Picture Corporation of America

Executive Offices
1600 Broadway
New York City

Number

Feature Productions

Page Two

(Continued from reverse side)

Exhibitor's Copy of
Application for Contract

Twenty-first: The following Schedule and all of the written and printed parts thereof are a part of this license: Exchange Chicago Date 10/13/38 Salesman M. M. Godshaw

Schedule of Exhibition Contract

Theatre	Exhibitor	Location of Theatre
Jackson Park	E. J. Bloom R. Salkin, Mgr.	6711 Stoney Island Ave. Chicago, Ill.

There are licensed for exhibition hereunder the sound photoplays of feature length set forth in the schedule hereof, which sound photoplays shall be or shall have been generally released by the Distributor for distribution in the period of time commencing April 1st, 1938 and ending August 31st, 1939, except such photoplays as the Distributor is required by contract to obtain the consent or approval of the Producer thereof or other party, to the terms and conditions of the licensing the exhibition thereof. The "road showing," "preview" and or "pre-release" of any photoplay during the said release year shall not be deemed a general release of said photoplay. All photoplays licensed hereunder shall have been or shall be produced in Great Britain or other parts of the British Empire.

The Distributor shall designate from time to time th titles of said photoplays in each price group licensed here under by giving written notice thereof at or before time o times notices of available date or dates is/are given by th Distributor to the Exhibitor pursuant to Article 6 Subdiv sion 1 hereof.

For the license to exhibit each of said photoplays, th Exhibitor shall pay to the Distributor the following:

Productions	Consecutive Days Run	Play Dates Subject to Availability and Prior Runs	Minimum Guaranteed License Fee Per Photopla
Five (5)	2/3		$40.00
Five (5)	2/3		25.00
Evergreen (Re-Issue)			
The Thirty Nine Steps (Re-Issue)			
Eight (8)			

Number of Photoplays Offered.....23
Number of Photoplays Licensed.....10

It is agreed that the license fees hereinabove specifie apply to each respective photoplay in the price group class fication as above provided and such license fees are n average license fees regardless of the number, type or cal ber of photoplays that may be generally released for distr bution by the Distributor during the period commencin April 1st, 1938 and ending August 31st, 1939.

It is agreed that, if, after the Distributor designates th title of any photoplay to be played on percentage term hereunder, the Exhibitor excludes such photoplay pursua to any terms inserted in this Schedule, such title designa tion shall be thereupon deemed rescinded and the Distrib tor may designate another photoplay herein to play on su specified percentage terms in lieu of the photoplay so e cluded by the Exhibitor, it being the intent of the parti hereto that the Exhibitor shall exhibit hereunder upon th percentage terms set forth in the schedule the aggrega number of photoplays specified to be played on percenta

terms. It is further agreed that the Exhibitor's right to exclude any photoplays hereunder shall be confined only to those photoplays designated in the lowest price group classification. It is further agreed that with respect to any photoplay which the Exhibitor has a right to exclude pursuant to any terms of this schedule the Exhibitor shall be deemed to have waived his right to exclude such photoplay unless the Distributor receives written notice of such exclusion within fourteen (14) days after the Distributor sends written notice designating the title of said photoplay. Anything in this agreement or inserted in this schedule to the contrary notwithstanding, the Exhibitor shall exhibit and pay for at least Ten (10) photoplays released by the Distributor.

Of the photoplays hereby licensed the respective number set forth below shall be exhibited on the days specified below:

.....photoplays as designated by Distributor on.....

.....photoplays as designated by Distributor on.....

Clearance—Run First week of Chicago General Release.

If the Exhibitor is granted hereunder a second or subsequent "run", the Distributor, at its option, shall have the right with respect to any of the motion pictures embraced hereunder, to change such "run" to a prior "run" by giving written notice thereof and the Exhibitor hereby agrees to exhibit such photoplay in accordance with said written notice.

Playing Arrangement

The Exhibitor agrees to play and pay for all the motion pictures licensed hereunder, subject to availability and prior runs, as follows: at least feature every , commencing on the day of , 193 , if and as available and in order of availability, until all motion pictures licensed hereunder are exhibited and paid for.

The Exhibitor during the whole of the licensed exhibitio
period of each of the photoplays exhibited hereunder agree
to and shall charge for admission per person to said theatr
the following minimum prices:

Evenings:	Adults, Orchestra 25¢; Balcony	;
	Children, Orchestra 10¢; Balcony	;
Matinees:	Adults, Orchestra 15¢; Balcony	;
	Children, Orchestra 10¢; Balcony	;

If during any such period less than said admission price
is charged, the Distributor in addition to all other right
hereunder shall have the right: (a) to immediately termi
nate all rights hereunder of the Exhibitor without prejudic
to the Distributor's right to collect all monies due or t
grow due hereunder from the Exhibitor on account of a
photoplays licensed hereunder; or (b) to immediately termi
nate the license of the photoplay then being exhibited, b
written notice to such effect to the Exhibitor and upon th
giving of such notice, the license of such photoplay sha
forthwith terminate and revert to the Distributor; or (c
provided the Exhibitor is granted herein a period of "clear
ance", to reduce such period by not to exceed three-fourth
in respect to each of the photoplays thereafter deliverabl
hereunder; or (d) provided no period of clearance is spec
fied in the Schedule, to withhold for a period not to exce
sixty (60) days notice of the date when each photopla
thereafter deliverable hereunder will be available for exh
bition by the Exhibitor; and as to each such photoplay th
"run", thereof, if any, granted the Exhibitor, shall b
deemed revoked and the Exhibitor agrees to exhibit eac
such photoplay after notice of the available date thereo
upon the date or dates determined as provided in Clau
Sixth hereof; if Distributor does not elect to terminate th
license of the photoplay then being exhibited, as provide
in Clause (b) of this paragraph, the Exhibitor shall accou
for all admissions to said theatre during the exhibition
such photoplay on the basis of the admission prices her
inabove stipulated.

The license herein granted for the number of days spe
fied in the Schedule shall not include the right of exhibiti
at any time previous to dawn of the first licensed and book
date of exhibition without securing express written perm
sion hereunder.

The Exhibitor agrees to lease from the Distributor or the Distributor's authorized agent for use only in connection with the exhibition of each of the motion pictures exhibited hereunder and agrees not to sub-lease or sell the following advertising accessories:—

The Exhibitor agrees to exhibit photoplays as delivered without alteration, excepting with the written or telegraphic approval of the Distributor subject to requirements of duly authorized public authorities necessitating any change. The Exhibitor also agrees to advertise and announce each photoplay as "A. G. B. Production," or "A. G. B. Release" as the case may be. In all newspaper advertising and publicity issued by the Exhibitor relating to said photoplays the Exhibitor shall adhere to the form of announcement contained in the advertising matter issued by the Distributor.

Optional Arbitration Clause—The following Clause is optional with the parties hereto. If it is desired to make such Clause a part of this license, the Exhibitor and the duly authorized representative of the Distributor shall sign their respective names where indicated immediately following this paragraph and unless so signed the said Clause shall be deemed excluded from this license agreement.

It is agreed by and between the parties that the following Clause, providing for voluntary arbitration of disputes arising hereunder, shall be included as a part of this License.

Representative of the Distributor duly authorized to agree to the following Clause.

Exhibitor.

Arbitration—The Exhibitor and the Distributor respectively, freely and voluntarily agree that as a condition precedent to the commencement of any action or proceeding in any court by either of them, to determine, enforce or protect the legal rights of either hereunder, each shall submit all claims and controversies arising hereunder for determination by arbitration to an Arbitration Board (hereby expressly waiving the oath of the arbitrators) which shall

consist of four members, each of whom shall be engaged in the motion picture business, and two of whom to be appointed by the Exhibitor, and the remaining two to be appointed by the Distributor.

Upon the written request of the Distributor or the Exhibitor for the arbitration of any dispute or controversy arising hereunder, the party making such request shall name therein two arbitrators stating the business address and business or business connection of each and shall designate therein the date, time and place of the hearing of such controversy. The date of such hearing shall not be earlier than seven (7) days from the date of the sending of such notice, unless it shall be claimed in such notice that irreparable injury will result unless there is a speedy determination of such controversy in which case such hearing may be designated to be held earlier than said seven (7) day period.

Within five (5) days after the mailing of such request for arbitration, the party upon whom such request is made shall name two arbitrators in a written notice mailed or delivered to the other party, stating therein the business address and business or business connection of each arbitrator. If either party fails or refuses to name the arbitrators as herein provided or if any arbitrator so named shall fail or refuse to act, or be unable to serve or shall be challenged and others are or another arbitrator qualified and then available to act is not then appointed, others or another arbitrator may be appointed by the other party as the case may be.

No member of the Arbitration Board shall hear or determine any controversy in which he has an interest direct or indirect and any member having such interest shall be disqualified to act.

If the arbitrators or a majority of them are unable to reach a decision, then they or a majority of them shall immediately select an umpire who shall not be engaged in the motion picture business. In such case the hearing before the umpire shall be at such time and place as the umpire shall designate and shall be had before the umpire alone, the arbitrators not to be permitted to attend the hearing before the umpire. If the arbitrators or a majority of them are unable to agree upon the selection of an umpire, the American Arbitration Association shall be requested to make such selection.

The Arbitration Board shall have general power to de-

termine such dispute or controversy as shall be submitted, to make findings of fact in respect thereof and to direct specific performance of a contract, and or that the same has been breached in whole or in part, and or that damages on such account shall be paid. The Board of Arbitration shall have the power only to give force and effect to the provisions of this license agreement and the rights or obligations of the parties thereunder.

The hearing of any such controversy shall be had before the Arbitration Board in the city wherein is situated the exchange of the Distributor from which the Exhibitor is served, unless the parties agree in writing that such hearings be had in some other place. If either party fails or refuses to submit to arbitration any such claims or controversy, the other party may apply to a United States District Court, or to any other court, including a court of a state in which such hearings would otherwise not be had, for an order to proceed to arbitrate in which case such hearing shall be had in such place as the court to which such application is made may lawfully direct.

The parties hereto further agree to abide by and forthwith comply with any decision or award of the arbitrators, or a majority of them and consent that any such decision or award shall be enforceable in or by any Court of competent jurisdiction pursuant to the law of such jurisdiction now or hereafter in force.

If the Exhibitor shall fail or refuse to submit to arbitration any such claim or controversy or to abide by and comply with the award of the arbitrators in respect thereto, within seven (7) days, the Distributor may at its option suspend the deliveries of the motion pictures provided for in this and in each other existing license agreement between the parties hereto and or terminate this and each such other license agreement; and upon such termination the aggregate of the license fees of all motion pictures specified in this and any other such license agreement then not exhibited forthwith shall become due and payable by the Exhibitor.

If the Distributor shall fail or refuse to submit to arbitration any such claim or controversy or to abide by and comply with the decision or the award of an Arbitration Board in respect thereto within seven (7) days, the Exhibitor may at the option of the Exhibitor terminate this and any other existing license agreement between the par-

ties hereto by mailing a notice to such effect to the Distributor within seven (7) days after such failure or refusal; and the Exhibitor shall have the rights and remedies provided in Clause Second (b) for failure to deliver motion pictures.

Any such termination by either party shall be without prejudice to any other right or remedy which the party so terminating may have by reason of any breach by the other party to this or any other existing agreement between the parties.

Each of the parties hereto, without notice to the other, may apply to any Court having jurisdiction to make this agreement to arbitrate a rule or order of such Court.

In Witness Whereof, the parties hereto have duly executed these presents this 13th day of October, 1938.

Gaumont British Picture Corporation of America

By

Exhibitor

An Individual—A Partnership—A Corporation
(strike out two)

By

Partner—Officer
(strike out one)

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License Agreement

Agreement of license under copyright made in one or more counterparts between Gaumont British Picture Corporation of America, a corporation (hereinafter referred to as the Distributor), party of the first part, and the Exhibitor, (hereinafter named and referred to as the Exhibitor, operating the theatre hereinafter designated), party of the second part.

Witnesseth: The parties hereto agree as follows:

License—First: The Distributor grants the Exhibitor and the Exhibitor accepts a limited license under the respective copyrights of the motion pictures designated and described in the Schedule set forth on the reverse side hereof, and under the copyright of any matter included in any sound recorded therewith, to exhibit publicly said motion pictures and to reproduce for public performances such

recorded sound in synchronism therewith, but only at the said theatre for the number of consecutive days specified in the Schedule and for no other use or purpose, provided that the reproducing equipment in the said theatre will operate reliably and efficiently to reproduce such recorded sound with adequate volume and high quality; and provided further that if copyrighted musical compositions are included in such recorded sound, the Exhibitor will have at the date or dates of the exhibition of each of such motion pictures a license from the copyright proprietor thereof or from any licensee of such copyright proprietor to perform publicly the said copyrighted musical compositions. If more than one theatre is hereinafter designated the said motion pictures are licensed for exhibition at only one of such theatres unless otherwise in the Schedule specifically provided in writing.

Term and Warranty—Second: (a) The term of this Agreement shall begin with the date fixed or determined for the exhibition at the said theatre of the first motion picture deliverable hereunder and shall continue for a period of 18 months thereafter unless otherwise in the Schedule provided. The Distributor agrees during said term to deliver to the Exhibitor, and the Exhibitor agrees to exhibit at said theatre during said term upon the date or dates herein provided for, a positive print of each of said motion pictures. The Distributor warrants that each positive print will be in good physical condition for projection and exhibition, and will clearly reproduce the recorded sound in synchronism therewith if properly used upon standard reproducing equipment. If the recorded sound is not recorded upon a print, all references herein to a print shall be deemed to include the records, discs and any other device upon which sound may be recorded for reproduction with the exhibition of a print.

Damages—Failure to Deliver—(b) If the Distributor shall fail or refuse to deliver, or the Exhibitor shall fail or refuse to exhibit during the term hereof, any of said motion pictures, or if the Distributor shall willfully violate any of the provisions of Clause Seventh hereof or shall deliver to the Exhibitor a print of any motion picture which print shall be determined was not in condition for exhibition and for the reproduction of sound as provided in Clause Second (a), the Exhibitor or the Distributor, as the case may be, shall pay the damage so caused and if such damage

cannot be definitely computed, shall pay as liquidated damages a sum equal to the fixed sum herein specified as the rental of each such motion picture or a sum computed as provided in Clause Third (c) hereof, if the rental of any such motion picture is to be determined, either in whole or in part upon a percentage of the admission receipts of said theatre or any part thereof or upon a percentage of such receipts and a fixed sum; provided that any claim by the Exhibitor with respect to the condition of a print shall be deemed to have been waived by the Exhibitor unless notice of such claim shall have been given by the Exhibitor to the Distributor's exchange from which the Exhibitor is served, by telephone or telegraph, or in person, immediately after the first public exhibition thereof by the Exhibitor and written confirmation thereof mailed by the Exhibitor upon the same day to the Distributor's said exchange.

Payment—Third—(a) Exhibitor agrees to pay for such license as to each such motion picture the fixed sums specified in the Schedule at least three (3) days in advance of the date of delivery of a print thereof at the Distributor's exchange or of the date of shipment to the Exhibitor from another exhibitor, unless after the acceptance of this application by the Distributor such payment shall be otherwise agreed to by the Distributor in writing signed by an officer of the Distributor.

Moneys in Trust—(b) Where the license fee for any motion picture herein is a fixed and specific sum of money (as distinguished from a license fee based upon a percentage of the gross receipts) then in case payment thereof is not made in advance of the exhibition of any such motion picture, the Exhibitor agrees in consideration of the extension of credit by the Distributor, that the Distributor shall receive its license fee for any such motion picture, out of the first admission receipts derived by the Exhibitor as a result of the exhibition of any such motion picture and such admission receipts shall belong to ~~and be the property of~~ the Distributor immediately upon possession thereof by the Exhibitor and shall be held in trust for the Distributor until paid to the Distributor, regardless as to whether the said moneys are physically segregated or not. In the event the admission fees received during the exhibition of said motion picture are not equal to the amount of the license fee payable to the Distributor, for said motion picture, the Exhibitor shall none the less remain and continue to be

liable for the balance of the amount due and payable to the Distributor after the moneys kept in trust for the Distributor shall have been paid to the Distributor.

Where license fee for any motion picture herein is based upon a percentage of the Exhibitor's gross receipts derived from the exhibition of such motion picture, the Distributor's share of the gross receipts due to the Distributor hereunder shall belong to the Distributor and shall be held in trust for the Distributor until paid to the Distributor and the Exhibitor agrees to keep such portion of the gross receipts as are payable to the Distributor segregated and in a distinct fund. However, the ownership by the Distributor of all trust funds as described in this Clause (b) shall not be impaired in the event the said trust fund is not physically segregated, and the Distributor shall own all general funds and property of the Exhibitor, to the extent of said monies agreed to be held in trust.

Percentage Bookings—(c) If the rental of any of such motion pictures is to be determined either in whole or in part upon a percentage of the admission receipts of said theatre or any part thereof, the Exhibitor agrees to pay such rental immediately after the last exhibition upon the last date of the exhibition of each such motion picture or if requested by the Distributor at the end of each day's exhibition. In each such case the Exhibitor shall deliver to the Distributor immediately after the last exhibition upon each date of exhibition of each such motion picture a correct itemized statement of the gross receipts of said theatre for admission thereto upon each such date. Such statement shall be signed by the Exhibitor or the Manager or Treasurer of said theatre and the Cashier thereof and shall include a statement of such facts and figures as may be provided in the Schedule to be furnished by the Exhibitor, and if requested by the Distributor, shall be made upon forms furnished by the Distributor. Upon the exhibition date or dates of each motion picture an authorized representative of the Distributor is hereby given the right to verify the sale of all tickets of admission to said theatre, and the receipts therefrom; and for such purpose shall have access to the theatre, including the box office, and also the right to examine all relevant entries relating to such gross receipts in all the Exhibitor's books and records; and if hereunder it is provided that the Exhibitor make certain expenditures and or deductions, to examine all entries relating to such

expenditures and or deductions. Such right of access and examination of the Exhibitor's books and records limited as aforesaid, shall continue for a period of four (4) months after the receipt by the Distributor of each such statement. The Distributor agrees, unless such representative is in the continuous employ of the Distributor or employed as a checker, not to employ as a representative for such purpose any person a resident of or employed in the place where the said theatre is located, other than a person engaged in business as an accountant.

Guaranteed Rentals—(d) If the rental of any of said motion pictures shall be a minimum guaranteed rental against and or in addition to a percentage of the admission receipts, then the Exhibitor agrees to pay such minimum guaranteed rental in accordance with Clause Third (a) hereof, and any additional monies to be paid as the percentage of said admission receipts, shall be paid by the Exhibitor in accordance with Clause Third (c) hereof.

Liquidated Damages—Percentage Bookings—(e) If the Exhibitor fails or refuses to exhibit any of said motion pictures as herein provided and the rental or any part thereof is to be computed in whole or in part upon a percentage of the admission receipts of said theatre, the Exhibitor shall pay the Distributor as liquidated damages for each day the Exhibitor fails or refuses to exhibit such motion pictures, in addition to any fixed sums payable hereunder in respect of such motion picture, a sum equal to such percentage of the average daily gross receipts of such theatre on each day any one feature motion picture designated by the Distributor and distributed by the Distributor was exhibited thereat within the period of ninety (90) days prior to the date or dates when said motion picture should have been so exhibited hereunder; or if no feature motion picture distributed by the Distributor was exhibited at such theatre during said ninety (90) day period, then a sum equal to such percentage of the average daily gross receipts of such theatre during the period of thirty (30) operating days immediately prior to the date or dates when such motion picture should have been exhibited, or prior to the date of such failure or refusal to exhibit any of said motion pictures; provided that if the Exhibitor shall exhibit such motion pictures for less than the full number of days provided for in the Schedule, for each day less than said full number of days, the sum equal to such percentage shall be

computed upon a sum equal to sixty-five per cent (65%) of the gross receipts of said theatre during the last day of the exhibition thereat of such motion picture. A sworn statement of the said daily gross receipts shall be delivered by the Exhibitor to the Distributor upon demand therefor.

Delivery and Return of Prints—Fourth: (a) After each of said motion pictures is generally released for public exhibition and becomes available for exhibition hereunder by the Exhibitor, the Distributor agrees to deliver as hereinafter provided, a print thereof to the Exhibitor.

(b) The public exhibition of any of said motion pictures for three (3) consecutive days at prices usually charged for admission to the theatre where so exhibited in the territory wherein is located the exchange from which the exhibitor is served, excepting any "road show," "tryout," "preview," or "pre-release" exhibition thereof, shall be deemed the general release for public exhibition of such motion picture but only in such territory. A "pre-release" exhibition shall be deemed any exhibition in advance of general release as herein defined which advance exhibition the Distributor shall deem desirable because of seasonal conditions.

(c) The Exhibitor agrees to exhibit each of said motion pictures in the order of its general release by the Distributor in the exchange territory in which said theatre is located. The Exhibitor shall have the right to select any of the motion pictures, excepting the last deliverable hereunder, for exhibition out of the order of its general release, subject to prior runs and or protection granted other exhibitors, on the date or dates determined as provided in Article Sixth hereof or otherwise agreed upon, but only upon the following conditions (a) that the Exhibitor is not in default hereunder and shall have fully complied with all the provisions, if any, set forth in the Schedule for the exhibition of one or more of said motion pictures at specified intervals; and (b) that the Distributor and the Exhibitor shall then agree upon the date or dates upon which all of the motion pictures generally released prior to the general release of such motion picture and available for exhibition hereunder shall be exhibited by the Exhibitor, which date or dates shall be within thirty (30) days from the first exhibition date of the motion picture to be exhibited out of the order of its general release; or in the alternative the Exhibitor shall then pay to the Distributor the license fee

for each of such motion pictures then generally released and available for exhibition hereunder, and as to any thereof which shall not be exhibited by the Exhibitor within thirty days from the first exhibition date of the motion picture to be exhibited out of the order of its general release, the grant of the run and clearance period in respect thereof shall be deemed waived by the Exhibitor. Upon the failure or refusal of the Exhibitor to exhibit any of such motion pictures then generally released and available for exhibition hereunder within said thirty day period or to pay the license fee thereof, the right of the Exhibitor to thereafter select for exhibition any motion picture out of the order of its general release shall be forfeited. The provisions of this paragraph (c) shall not be deemed to limit or qualify the provisions of Article Sixth hereof excepting as in this paragraph (c) specifically provided.

(d) The Distributor shall make deliveries hereunder to the Exhibitor or to the Exhibitor's authorized agent, by delivery at the Distributor's exchange, or to a common carrier, or to the United States Postal authorities. If deliveries are made to a carrier or to a post office, they shall be made in time for prints to reach the place where the said theatre is located in time for inspection and a projection thereof before the usual time for opening said theatre.

(e) Exhibitor agrees to return immediately after the last exhibition on the last day of exhibition licensed, each print received hereunder, with its reels and containers, to the exchange of the Distributor from which the Exhibitor is served or as otherwise directed by the Distributor in the same condition as when received, reasonable wear and tear due to proper use excepted. Exhibitor agrees to pay all costs of transportation of such print, reels, and containers from the Distributor's exchange or the last previous exhibitor having possession of the same, and return to the Distributor's exchange; or if directed by the Distributor, to ship such positive prints elsewhere than to the Distributor's exchange transportation charges collect. It is agreed that the delivery of a positive print properly directed and packed in the container furnished by the Distributor therefor, to a carrier designated or used by the Distributor and proper receipt therefor obtained by the Exhibitor, shall constitute the return of such positive print by the Exhibitor.

(f) If Exhibitor fails to or delays the return of any

positive print to the Distributor or fails to forward or delays forwarding (as directed by the Distributor) any such print to any other exhibitor, the Exhibitor agrees to pay the Distributor the damage, if any, so caused the Distributor and in addition the damage, if any, so caused such other exhibitor. The Exhibitor shall have the right to participate in any compromise of or intervene in any arbitration or legal proceeding based upon any claim for such damage asserted against the Distributor by another exhibitor, notice of which shall be given the Exhibitor by the Distributor.

Loss and Damage to Prints—Fifth: The Exhibitor shall pay to the Distributor a sum equal to the cost of replacement at the Distributor's exchange for each linear foot of any print, lost, stolen or destroyed or injured in any way in the interval between the delivery to and the return thereof by the Exhibitor in full settlement of all claims for such loss, theft, destruction or injury. Such payment, however, shall not transfer title to or any interest in any such positive print to the Exhibitor or any other party, nor release the Exhibitor from any liability arising out of any breach of this agreement. The Distributor shall at the option of the Exhibitor repay or credit to the Exhibitor any sums paid by the Exhibitor for any lost or stolen print, excepting "news reels," upon the return of such loss or stolen print to the Distributor within sixty (60) days after the date when the same should have been returned hereunder. The Exhibitor shall not be liable for the damage or destruction of any print, provided the Exhibitor establishes such damage or destruction occurred while in transit from the Exhibitor and delivery thereof was made by the Exhibitor as hereinabove provided. The Exhibitor shall immediately notify the Distributor's exchange by telegram of the loss, theft or destruction of or damage or injury to any print. If any print shall be received from the Exhibitor by the Distributor or any subsequent exhibitor in a damaged or partially destroyed condition it shall be deemed to have been so damaged or destroyed by the Exhibitor unless the latter, immediately after the first public exhibition thereof shall have telegraphed the Distributor's exchange that such print was received by the Exhibitor in a damaged or partially destroyed condition, and setting forth fully the nature of such damage and the amount of footage so damaged or destroyed.

Selection of Play Dates—Sixth: Unless otherwise agreed upon or unless definitely specified or otherwise provided for in the Schedule, the exhibition date or dates of each of said motion pictures shall be determined as follows:

1. Subject to prior runs and/or clearance granted or hereafter granted by the Distributor to other exhibitors and within a reasonable time after a print or prints of any of said motion pictures are received at the exchange of the Distributor out of which the exhibitor is served, and provided the Exhibitor is not in default hereunder, the Distributor shall mail to the Exhibitor a notice in writing of the date when each such motion picture will be available for exhibition by the Exhibitor (which date is hereinafter referred to as the "available date").

2. Within seven (7) days after the mailing of such notice, the Exhibitor shall select an exhibition date or other not theretofore assigned to another exhibitor or other exhibitors, within the period commencing upon the available date and ending fifteen (15) days thereafter and give to the Distributor written notice of the date or dates so selected.

3. Upon the failure of the Exhibitor to so select such date or dates the Distributor shall designate such date or dates by mailing written notice thereof to the Exhibitor.

Protection and Run—Seventh: The Distributor agrees not to exhibit or grant a license to exhibit any of said motion pictures for exhibition in conflict with the "run" or prior to the expiration of the "clearance period" if any in the Schedule specified, at any theatre therein named or within the territorial limits therein specified. Such period of clearance as to each of said motion pictures shall be computed from the last date of the exhibition thereof licensed hereunder. It is agreed, however, that any violation of Article Seventh hereof by Distributor shall not affect this contract except as to the particular motion picture as to which such violation has occurred, and that the damage that may be claimed by Exhibitor shall not exceed the amount of the license fee herein provided for such particular motion picture, or if such motion picture has been contracted for on the basis of a guarantee against a percentage, shall not exceed the amount of such guarantee, or if upon a straight percentage basis, shall not exceed the average amount paid by Exhibitor to Distributor for the motion pictures of Distributor theretofore exhibited by Exhibitor hereunder, and it is further agreed that such claim

for damage shall be the sole and exclusive remedy of Exhibitor on account of such violation.

Description of Pictures—Eighth: (a) The Distributor shall have and hereby reserves the right, in its sole discretion, to change the title of any of the said motion pictures, to make changes in, alterations and adaptations of any motion picture, story, book or play, and to substitute for any thereof, any other story, book, play, or motion picture. The Distributor also shall have, and hereby reserves the right to change or substitute the director, cast, or any member thereof, of any of said motion pictures.

Advertising Prior to First Run—Ninth: (a) If the Exhibitor is granted a subsequent run of the said motion pictures, the Exhibitor shall not advertise any thereof by any means of advertising prior to or during the exhibition of any one of said motion pictures by any other exhibitor having the right to a prior run thereto. Nothing in this Clause shall be deemed to prohibit the Exhibitor from advertising generally all of said motion pictures as a group, but such general advertising shall not refer to any one of said motion pictures during its exhibition by any other exhibitor having the first or immediately prior run thereof.

(b) The Exhibitor shall not advertise by any means of advertising any of said motion pictures which may be road shown by the Distributor and not excepted and excluded from this license, until after the completion of such road-showing in the United States, and then only as permitted in paragraph (a) of this Clause.

(c) For a breach of the provisions of this Clause the Distributor shall have in addition to all other rights the right to exclude from this license any motion picture advertised in violation of the provisions hereof by written notice to such effect mailed to the Exhibitor and upon the mailing of such notice the license of such motion picture shall terminate and revert to the Distributor without prejudice to Distributor's other rights arising from such breach.

Acceptance by Distributor—Tenth: (a) Until accepted in writing by an officer of or any person authorized by the Distributor and notice of acceptance sent to the Exhibitor this instrument shall be deemed only an application for a license under Copyright, and may be withdrawn by the Exhibitor any time before such acceptance. Unless such notice of acceptance is sent the Exhibitor by mail or telegraph within thirty (30) days after the date thereof, if the said

theatre of the Exhibitor is located East of the Mississippi River, and within forty-five (45) days after the date thereof if located west of said river, said application shall be deemed to have been withdrawn. The deposit by the Distributor of any check or other consideration given by the Exhibitor at the time of application as payment for any purpose or the delivery of a print of any of said motion pictures shall not be deemed an acceptance hereof by the Distributor.

Interstate Commerce—Waiver of Defense—(b) The Exhibitor recognizes and understands that upon the Distributor's acceptance in New York City, this instrument becomes a contract executed in New York City. The Distributor has advised the Exhibitor and the Exhibitor understands that the Distributor does not own or operate any film exchanges, but the film exchange operated by Twentieth Century-Fox Film Corporation, or its subsidiaries, or other companies in the exchange territory in which the Exhibitor's theatre is located will physically handle the prints of the photoplays licensed hereunder and that reference is made to "Distributor's exchange" throughout this instrument merely for convenience. The Exhibitor admits, concedes and understands that until the Distributor does own and operate a film exchange in the state in which the Exhibitor's theatre is located and until the Distributor executes exhibition contracts in said state, the Distributor is engaged in interstate commerce and the Exhibitor does hereby waive and agrees not to assert any defense that the Distributor has not qualified to do business as a foreign corporation in the state in which the Exhibitor and or the Exhibitor's theatre is located.

Changes in Writing—Eleventh: This license agreement is complete and all promises, representations, understandings and agreements in reference thereto have been expressed herein. No change or modification hereof shall be binding upon the Distributor unless in writing signed by an officer of the Distributor.

Assignment—Sale of Theatre—Twelfth: If the Exhibitor sells the said theatre or transfers any interest therein and is not in default hereunder, the Exhibitor may assign this license to the purchaser of the theatre or of such interest without the written consent of the Distributor but any such assignment shall not be valid or of any effect hereunder unless a written acceptance thereof by the assignee assum-

ing the obligations of the Exhibitor shall be delivered to the Distributor. Any such assignment shall not release the Exhibitor from any liability hereunder unless such release from liability is consented to by the Distributor in writing. Except as herein provided, the Exhibitor shall have no right to assign this agreement. The Exhibitor agrees that the Distributor shall have the absolute right to assign this agreement to any person, firm, or corporation.

Taxes—Thirteenth: The Exhibitor agrees to pay to the Distributor, upon demand therefor, any taxes or other charges now and or hereafter levied, imposed, or based upon the license, delivery and or exhibition of prints of any of the said motion pictures and or upon the sums payable under this license agreement by the Exhibitor to the Distributor and or the licence or rental of the rights and prints herein granted by the Distributor to the Exhibitor hereunder, and or any other reason whatever. If the Exhibitor fails or refuses to pay upon demand, such tax or charge, the Distributor, at its option, shall have the right to add such tax or charge to the C. O. D. charges of any print of the motion pictures licensed and delivered hereunder; or, if credit for the license fees and or rental charges of said prints and rights, is or has been extended to the Exhibitor, as hereinbefore provided, then, at the option of the Distributor, such tax or charge shall be paid by the Exhibitor C. O. D. of such print or prints.

In the event such tax or charge shall be ultimately declared invalid by final judicial decree by the Court of last resort, the Distributor agrees to return the said tax or charge received from the Exhibitor, but not paid over by the Distributor to the governmental agency designated to receive or collect same; it being understood that the Distributor shall not be liable for the return of any taxes or charges paid over to such governmental agency.

Prevention of Performance—Fourteenth: If the Exhibitor shall be prevented from exhibiting or the Distributor from delivering any of the said motion pictures for causes beyond their direct control then this license in respect to each such motion picture shall terminate and revert to the Distributor without liability on the part of either party, provided reasonable written notice of such termination and the cause thereof is given.

First Run Exhibitions—Fifteenth: (a) If the Exhibitor is granted a first run of the said motion pictures, the Ex-

hibitor shall exhibit each of the feature motion pictures within the period beginning with the date scheduled and announced by the Distributor for the general release of each feature motion picture in the territory wherein is located the exchange of the Distributor out of which the Exhibitor is served and ending ninety (90) days thereafter, notwithstanding any provision of Clause Sixth hereof to the contrary. If the first exhibition date of any of the said motion pictures shall occur on a date later than sixty (60) days after its scheduled and announced general release date, then the period of clearance of such motion picture shall be reduced so as to expire ninety (90) days after said scheduled date of its general release. If the Exhibitor is granted a first run of the said motion pictures and the Exhibitor fails to exhibit any feature motion picture within said period of ninety (90) days, the grant of the said first run and the clearance period in respect thereof shall be deemed waived by the Exhibitor and the license fee as to such feature motion picture shall thereupon forthwith become due and payable to the Distributor, with the right to the Exhibitor to exhibit such feature motion picture as hereinafter in Paragraph (c) of this Clause provided.

Second Run Exhibitions—(b) If the Exhibitor is granted a second run of the said pictures, the Exhibitor will exhibit each of said respective motion pictures within fourteen (14) days after the completion of the prior run plus the clearance period of each of said motion pictures respectively.

If the Exhibitor is granted a second run of the said motion pictures and any other Exhibitor having been granted the run prior to such second run fails to exhibit any of the said motion pictures within the said period of ninety (90) days specified in Paragraph (a) of this Clause Fifteenth, the Exhibitor hereunder shall exhibit each of said motion pictures within the period beginning with the date of the expiration of the said ninety (90) day period and ending fourteen (14) days thereafter notwithstanding any provision of Clause Sixth to the contrary. If the Exhibitor is granted a second run of the said motion pictures and the Exhibitor fails to exhibit any feature motion picture within said fourteen (14) days period the grant of such second run and the clearance period if any in respect thereof shall be deemed waived by the Exhibitor and the license fee as to such feature motion picture shall thereupon forthwith become due and payable to the Distributor with the right to

the Exhibitor to exhibit such feature motion picture as hereinafter in Paragraph (c) of this Clause provided.

Subsequent Runs Exhibitions—(c) If the Exhibitor is granted a run subsequent to the second run of the said motion pictures, the Exhibitor will exhibit each of said respective motion pictures within seven (7) days after the completion of the said prior run plus the clearance period of each of said motion pictures respectively.

If the Exhibitor is granted a run subsequent to such second run and any other Exhibitor having been granted the prior second run fails to exhibit any of the said motion pictures within the said period of fourteen (14) days specified in Paragraph (b) of this Clause Fifteenth, the Exhibitor hereunder shall exhibit each of said motion pictures within the period beginning with the date of the expiration of the said fourteen day period and ending seven (7) days thereafter notwithstanding any provision of Clause Sixth hereof to the contrary. If the Exhibitor is granted a run subsequent to a second run of the said motion pictures and the Exhibitor fails to exhibit any feature motion picture within said seven (7) day period, the grant of such subsequent run and the clearance period if any in respect thereof shall be deemed waived by the Exhibitor and the license fee as to such feature motion picture shall thereupon forthwith become due and payable to the Distributor with the right to the Exhibitor to exhibit such feature motion picture as hereinafter in Paragraph (c) of this Clause provided.

Extended Runs—(d) If any motion picture is exhibited in any theatre in the said territory prior to the run granted to the Exhibitor hereunder, and such prior run is extended or held over, thereby causing said prior run to overlap with the run granted to the Exhibitor hereunder, then the commencement of the run granted to the Exhibitor hereunder, shall be extended until such prior run as held over, or extended, plus the clearance granted thereto, is completed.

Exhibition After Revocation of Run and Clearance—(e) Upon the waiver of the grant of the run and/or the clearance period of any feature motion picture as provided in Paragraphs (a), (b) or (c) of this Clause, the Exhibitor upon payment of the sum or sums payable hereunder as provided in this Clause for the license to exhibit such feature motion picture, shall have the right to exhibit the same hereunder upon a date or dates not in conflict with any run

and or clearance period granted or hereafter granted to other exhibitors, upon written request mailed or delivered to the Distributor within thirty (30) days after the last date upon which such feature motion picture should have been exhibited by the Exhibitor as provided in this Clause. Failing to make such request within said period of thirty (30) days the license to exhibit such feature motion picture granted hereunder shall terminate and revert to the Distributor.

If the provisions of this Clause shall anywise be in conflict with the provisions of any other license agreement made and entered into by the Distributor with any other exhibitor prior to October 1, 1937, the provisions of this Clause shall be deemed to be subordinate and subject to the provisions of such other license agreement.

Pictures Not Generally Released—Sixteenth: If any of the said motion pictures described in the Schedule, excepting those, if any, which may be road shown by the Distributor, shall not be generally released by the Distributor for distribution in the United States during the period beginning April 1st, 1938, and ending August 31st, 1939, each such motion picture shall be excluded from this license, upon written notice to such effect given to the Exhibitor by the Distributor prior to fifteen (15) days before the end of said period. In such case the Distributor may exhibit and license for exhibition each of such motion pictures so excluded when and where desired by the Distributor and all claims of the Exhibitor in respect thereto are hereby expressly waived and the Distributor released and discharged therefrom by the Exhibitor: If such written notice is not sent by the Distributor, and any of the said motion pictures are generally released by the Distributor or scheduled and announced by the Distributor for general release within three (3) months after August 31, 1939, the Exhibitor shall exhibit such motion pictures upon all the terms and conditions in this agreement contained, unless the Exhibitor shall have given written notice by registered mail to the Distributor not later than ten (10) days after August 31, 1939, advising that the Exhibitor elects to exclude said motion pictures.

Remedies—Seventeenth: If the Exhibitor shall fail or refuse to pay the rental or license fees of any of such motion pictures as provided in this license agreement or to furnish statements of the receipts of said theatre, if any,

are required hereunder, or to give the Distributor's representative access to the said theatre or its box office and/or the Exhibitor's books and records relative to motion pictures the rentals of which are based upon the said theatre's admission receipts as herein provided, or if the Exhibitor shall exhibit or permit the exhibition of any of said motion pictures at any time or place other than as herein specified, or if the Exhibitor becomes insolvent or is adjudicated a bankrupt, or executes an assignment for the benefit of his creditors, or if a receiver is appointed for any of the property of the Exhibitor, or if the Exhibitor voluntarily or by operation of law should lose control of the said theatre or of his said interests therein making it impossible for the Exhibitor to exhibit the said motion pictures at the said theatre, then upon the happening of any one or more of said events, the Distributor may at its option, (1) terminate the Exhibitor's rights under this license agreement, or (2) suspend the delivery of additional motion pictures hereunder until such default or defaults should cease and be remedied. It is agreed that the exercise of any of said remedies by the Distributor shall be without prejudice to the Distributor's right to collect all monies due or to grow due hereunder from the Exhibitor on account of all photoplays licensed hereunder, in addition to any other right or remedy of the Distributor against the Exhibitor at law or in equity.

Breaches of Other Contracts—Eighteenth: If the Exhibitor shall breach any other agreement between the Exhibitor and Distributor made prior to, simultaneously with, or subsequent to the making of the license agreement hereunder, then any such breach of such other agreements shall be deemed a breach of the agreement hereunder, and thereupon the Distributor shall have all the rights and remedies with respect to the breach of such other agreements of the same force and effect as the such breach had been a breach of the agreement hereunder.

Cutting or Alteration of Prints—Nineteenth: The Exhibitor shall exhibit each print in its entirety and shall not copy, duplicate, subrent or part with possession of any print. The Exhibitor shall not cut or alter any print, excepting to make necessary repairs thereto, or with the written or telegraphic consent of the Distributor. The Exhibitor however may cut the print of a news reel, and in such case shall completely restore all parts cut there-

from, prior to the return thereof to the Distributor or shipment elsewhere if so directed by the Distributor, in the same condition as received by the Exhibitor.

Roadshows—Twentieth: (a) The Distributor shall have the right to exhibit and/or cause to be exhibited as a "roadshow," at any time prior to the exhibition thereof hereunder, such of the motion pictures licensed hereunder as the Distributor may from time to time select and determine, provided, however, that such roadshow exhibition shall be at theatres at which admission prices for evening performances, during such exhibitions thereof, of not less than one dollar shall be charged for the majority of the orchestra seats, and further provided that, except in the cities of New York and Los Angeles, not more than two of such motion pictures shall be so roadshown.

(b) If and when any such roadshow exhibition shall be in the City of New York and/or the City of Los Angeles, and if the Exhibitor's theatre is situated in the territory then served by the Distributor's exchange or exchanges located in New York or Los Angeles, as the case may be, the Distributor shall have the right to except and exclude from this license not to exceed two of such motion pictures so roadshown in each or both of said territories, upon sending to the Exhibitor written notice to such effect not later than four (4) weeks after the commencement of such roadshow exhibition and provided that the Distributor shall by like notice except and exclude such motion picture from all other license agreements containing this Clause and licensing the exhibition of such motion pictures in such territory. The exception and exclusion of any such motion picture in the territory then served by the Distributor's exchange or exchanges located in the City of Los Angeles, or in the City of New York, as the case may be, shall not be deemed to require the Distributor to except and exclude the same motion picture in both of said territories.

(c) If and when any such roadshow exhibition, excepting those in the City of New York and/or in the City of Los Angeles, shall be in the territory served by the Distributor's exchange or exchanges serving the Exhibitor's theatre, the Distributor shall have the right to except and exclude from this license not to exceed two of such motion pictures so roadshown upon sending to the Exhibitor written notice to such effect within seven (7) days after the commencement of such roadshow exhibition and provided

that the Distributor shall by like notice except and exclude each such motion picture from all other license agreements containing this Clause and licensing the exhibition of such motion picture in such territory.

(d) The inadvertent omission to send to any of such other exhibitors the notice provided for in Paragraphs (b) and (c) of this Clause shall not be deemed to affect the exception and exclusion from this license of any such motion picture.

(e) The Distributor may so exercise such right to except and exclude any such motion picture from time to time, in the respective territories, as above defined, in the United States. Any motion picture so roadshown in any place in the United States, and not excepted and excluded from this license as aforesaid, shall not be deemed available for exhibition hereunder until after the completion of such roadshowing of such motion picture in the United States, and such motion picture shall be exhibited when generally released by the Distributor and as and when available for exhibition by the Exhibitor, and the term of this license agreement specified in Clause Second shall be in respect to each such motion pictures, extended to and including the date or dates of exhibition by the Exhibitor hereunder of each thereof.

(f) For each motion picture that the Distributor shall except and exclude, as aforesaid, the Exhibitor is hereby granted the option to except and exclude from this license one of the other motion pictures licensed hereunder, but only if the Exhibitor shall give to the Distributor written notice to such effect not later than fourteen (14) days before the date fixed for the exhibition hereunder of such other motion pictures. The Distributor may exhibit and or license the exhibition of any and all motion pictures excepted and excluded from this license by the Distributor and or the Exhibitor, as aforesaid, when and where desired by the Distributor, free from all claims of the Exhibitor in respect thereof and the license of each thereof shall forthwith upon exclusion as hereinbefore provided terminate and revert to the Distributor.

2985 The following is Film License Agreement between Malmar Pictures and Jackson Park Theatre dated February 13, 1939, from PLAINTIFF'S EXHIBIT 36:

(Filed Oct. 11, 1944. Roy H. Johnson, Clerk.)

2986 Exhibitor's Application Copy

Malmar Pictures
244 West 49th Street
New York
Phone Circle 6-6150

Exchange—Chicago	Contract No. Date—2/13/39	Salesman—Office
Theatre	Exhibitor	Location of Theatre
Jackson Park	R. Salkin	Chicago, Ill.

Agreement, made in one or more counterparts between Malmar Pictures, a corporation (hereinafter referred to as the "Distributor"), party of the first part, and the Exhibitor (hereinafter named and referred to as the "Exhibitor", operating the theatre or theatres hereinafter designated), party of the second part.

Schedule Incorporated in This Agreement

First: The schedule contained and referred to herein and all parts thereof, whether written or printed, are hereby deemed included in and made a part of this agreement.

License

Second: The Distributor hereby grants to the Exhibitor, and the Exhibitor hereby accepts a license under the respective copyrights of the several photoplays designated and described in the Schedule herein subject to the terms, limitations and conditions in this agreement contained to exhibit and reproduce and the Exhibitor agrees to exhibit and reproduce in synchronism and co-ordination with the recorded sound thereof (during the period of one year commencing with the date fixed or determined as hereinafter provided for the exhibition in the theatre hereinafter designated of the first photoplay deliverable hereunder,

unless otherwise in the Schedule provided) each of such photoplays at the said theatre only for the number of successive days in the said Schedule provided. It being understood that if the Exhibitor does not exhibit all of such photoplays within the period herein specified, the Exhibitor shall at the end of such period immediately pay to the Distributor the aggregate of rentals specified for all photoplays remaining unplayed. If more than one theatre is hereinafter designated no photoplay is licensed hereunder for exhibition at more than one of such theatres unless otherwise specifically agreed upon in the Schedule.

Recorded Sound: Warranties

Third: (a) "Recorded Sound" as used in this agreement is deemed to mean the spoken words, music or other sounds recorded upon a positive print of a photoplay or upon a record, disc or other similar devices separate and apart from a positive print, for use in synchronism therewith. Distributor does not warrant that such recorded sound will be recorded on the positive print or on records, discs or other similar devices, and reserves the right to use any one or more methods of recording it may from time to time determine.

(b) The Exhibitor warrants and agrees first, that the sound reproducing equipment installed in said theatre will operate reliably and efficiently to reproduce such recorded sound with adequate volume and high quality, whether recorded upon the positive print or upon records, discs or other similar devices; and second, that if copyrighted musical compositions are included in such recorded sound, the Exhibitor shall, at the time of the exhibition of such photoplays and the reproduction of such recorded sound, have an effective license from the American Society of Authors, Composers and Publishers publicly to perform the copyrighted musical compositions in the repertoire of said Society.

(c) The Exhibitor agrees to run all of said photoplays on the same size reels as furnished by Distributor; to return to Distributor's Exchange all damaged or broken parts of all sound records, discs or other similar devices, if any have been delivered to Exhibitor hereunder, immediately following the last exhibition of the photoplay with which such sound records are used; and if such recorded sound is recorded on records, discs or other devices, to re-

place with black, blank, positive stock all parts removed from the positive print of ~~any~~ photoplay while in the Exhibitor's possession, but Exhibitor shall have no right to remove any part of the positive print except as specifically authorized elsewhere in this license.

Time and Place of Exhibition

Fourth: The Exhibitor agrees to exhibit and reproduce under said license said photoplays, but only at the theatre hereinafter specified, on the exhibition date or dates fixed in the Schedule or determined as hereinafter provided and not to allow any positive print and records, discs, or other similar device if any thereof to leave the Exhibitor's possession during the period specified for the exhibition thereof by the Exhibitor, nor to exhibit or to permit the exhibition or reproduction of any ~~such~~ positive print and or records, discs or other device if any at any other time or place. Such license shall be specifically for such exhibition and reproduction of such photoplays, and for no other purpose. It is agreed that the Exhibitor shall not exhibit the said photoplays on the first exhibition date thereof before six A.M. of that said day.

Payment

Fifth: The Exhibitor agrees to pay for such license as to each of such photoplays the fixed sums herein specified at least seven (7) days in advance of the date of shipment from the Distributor's Exchange or from the last previous exhibitor of the positive print thereof.

Schedule.

Pictures (Titles subject to change without notice)	No. Days	Rental Terms
Moonlight Sonata	2	$50.00

Playdate 3-15-16 39

1 Picture @ $50.00

Reapplication: The Distributor shall have the right to apply the rental terms (including the license fee and other rental terms specified in the Schedule) of any photoplay to any other photoplay listed or embraced in the Schedule.

provided that the Distributor shall at no time increase the total number of photoplays to which the same rental terms apply beyond the total of such photoplays specified in the Schedule. In case the Distributor desires to change the rental terms of any photoplay as above provided, the Distributor shall notify the Exhibitor of the photoplay affected and the terms to be applied to such photoplay, in the notice of availability sent to the Exhibitor relating to such photoplay or prior thereto.

End of Schedule

In Witness Whereof, R. Salkin, the Exhibitor operating the Jackson Park Theatre, located at No. , Street City Chicago State Ill. has on 2/13/39 executed this application, which upon written acceptance by the Distributor when countersigned and approved in the space to the left provided below shall be deemed to be the license to the Exhibitor for the exhibition of the photoplays specified in the Schedule at said theatre in accordance with the terms hereof.

Accepted, Approved and Countersigned at New York, N. Y.

Malmar Pictures
By
(This signature is for identification only and is not an acceptance)

Exhibitor C W Bloom (L.S.)
An Individual—A Partnership—
A Corporation
(Strike out two)

By (Illegible)
Partner—General Manager—Officer
(Strike out two)

2987 EXHIBITION CONTRACT

Payment on Account: Deposit

Sixth: The Exhibitor shall pay to Distributor upon execution of this application the sum of $ ..... receipt whereof is hereby acknowledged, as security the due and faithful performance by the Exhibitor of the terms, provisions and conditions of the license gran hereunder and provided the Exhibitor duly and faithfu performs all of the terms, provisions and conditions this license, then said sum shall be applied by the D tributor toward the license fees of the last photoplay liverable hereunder. If the Exhibitor defaults in the and faithful performance of any of the terms, provisi and conditions of this license the Distributor may ap said sum toward the liquidation of any liability of Exhibitor under this license of any other agreement wh the Distributor has with the Exhibitor, or toward damage suffered or sustained by the Distributor on acco of any breach by the Exhibitor of this license. Anyth elsewhere herein contained to the contrary notwithstand the Distributor shall be under no obligation to maintain said sum in any separate fund but shall have the right co-mingle same with its other funds.

Protection and Run

Seventh: During the life of this contract the Distr utor agrees not to exhibit or license the exhibition of such photoplays in conflict with the "run" or "protect period", if any, in the Schedule specified. Unless oth wise provided herein, such "protection period" shall computed from the last date of exhibition of each pho play as fixed herein. If "protection" is granted h under against a specified theatre or theatres which "p tection" shall indicate that it was the intention of the D tributor to grant such "protection" against all of theatres in the immediate neighborhood or vicinity of Exhibitor's theatre, then, unless otherwise provided the Schedule, such "protection" shall be deemed to ap to and include any theatre that may hereafter be ope in such neighborhood or vicinity.

If the Exhibitor is granted hereunder a second or subsequent "run", the Distributor shall have the right in its sole discretion to grant to the Exhibitor in respect to any of the photoplays herein embraced a "run" prior to such second or subsequent "run" by giving notice in writing to such effect to the Exhibitor and the Exhibitor agrees to exhibit any such photoplay in accordance therewith.

Delivery and Return of Prints, Records, and Discs

Eighth: The Distributor agrees to deliver to the Exhibitor during the period specified in Article Second hereof or otherwise in the Schedule provided for a positive print with recorded sound for exhibition and reproduction of each of such photoplays for exhibition and reproduction at the said theatre on the dates specified or on the dates determined as herein provided. Delivery of such positive prints by the Distributor to the Exhibitor, at the Distributor's exchange or to a common carrier or to the United States postal authorities for mailing or to any agent of the Exhibitor shall be deemed delivery by the Distributor to the Exhibitor hereunder.

All deliveries other than at the Distributor's exchange shall be made in time to enable the carrier thereof in accordance with the carrier's time schedule to deliver to the Exhibitor or at the place where the Exhibitor's theatre is located prints at least one hour before the usual time for the opening of the Exhibitor's theatre.

The Exhibitor agrees to return each positive print received by the Exhibitor hereunder, with the reels, containers, records, discs, or other similar devices furnished therewith to the exchange of the Distributor from which the Exhibitor is served, or as otherwise directed by the Distributor immediately after the last exhibition of such positive print, in the same conditions as when received by the Exhibitor, reasonable wear and tear due to the proper use thereof excepted. The Exhibitor agrees to pay all cost of transportation of such positive prints, reels, containers, records, discs or other similar devices from the Distributor's exchange or the last previous exhibitor having possession of any of such positive prints (as the case may be) and return to the Distributor's exchange; or if directed by the Distributor, to ship such positive prints, records, discs and or other similar devices elsewhere than to the Distributor's exchange transportation charges col-

lect. It is agreed that the delivery of a positive print and or any records, discs or other similar devices properly directed and packed in the container furnished by the Distributor therefor, to a carrier designated or used by the Distributor and proper receipt therefor obtained by the Exhibitor, shall constitute the return of such positive print and/or records, discs, or other similar devices by the Exhibitor.

If the Exhibitor fails to or delays the return of any positive print and/or any records, discs, or other similar devices to the Distributor or fails to forward or delays forwarding (as directed by the Distributor) any such print and/or any records, discs, or other similar devices to any other exhibitor, the Exhibitor agrees to pay the Distributor the damage, if any, so caused the Distributor and in addition the damage, if any, so caused such other exhibitor.

Selection or Designation of Play Dates

Ninth: The exhibiton date or dates of each photoplay, unless definitely specified or otherwise provided for in the Schedule, or otherwise agreed upon, shall be determined as follows:

1. The Distributor shall mail to the Exhibitor at least fifteen days' notice in writing of the date upon which each photoplay will be available for exhibition by the Exhibitor, consistent with prior runs and/or protection heretofore or hereafter granted to other exhibitors (which date is hereinafter referred to as "the available date"). Such notice shall be of no effect unless prints of such photoplay are in the exchange of the Distributor from which the Exhibitor is served.

2. Within fourteen days after the mailing of such notice, the Exhibitor shall select an exhibition date or dates within a thirty day period commencing with such available date, by giving written notice to the Distributor of the date, or dates so selected.

If the exhibition date or dates so selected by the Exhibitor are not open for the Exhibitor, then the exhibition date or dates shall be designated as provided in the following paragraphs "A" and "B":

(A) If other dates within said thirty day period are open the Exhibitor shall immediately select from such other open dates another date or other dates; failing to do

so, then the Distributor shall designate the date or dates which shall be within a period not earlier than two weeks nor later than six weeks from the date first selected by the Exhibitor, by mailing fourteen days notice to the Exhibitor.

(B) If no other day or dates within said thirty day period are open (after the Exhibitor's written request therefor) then the Exhibitor shall designate the date or dates which shall be within a period not earlier than two, nor later than six weeks from the last date of the said thirty day period, by immediately giving written notice thereof to the Distributor. If the Exhibitor fails to immediately designate such date or dates, as provided in this paragraph "B", the Distributor shall designate the date or dates within the same period by mailing to the Exhibitor fourteen days notice of such date or dates.

If the Exhibitor fails to make any selection within fourteen days after the mailing of the available dates of any photoplay, then the Distributor may at any time designate the exhibition date or dates thereof, which date or dates shall not be prior to the available date, by mailing notice thereof at least fourteen days before such exhibition date or dates; and if any such photoplay shall have been exhibited by any other exhibitor having a "run" prior in point of time and immediately preceding the "run" specified in the Schedule granted to the Exhibitor, then the Distributor shall designate the exhibition date or dates thereof, which shall be within a period of forty-five days commencing with the available date. In case the exhibition date or dates of any of the photoplays shall be designated by the Distributor pursuant to this paragraph, "the period of protection," if any, specified in the schedule, shall begin upon the fifteenth (15th) day of the thirty-day period specified in paragraph 2 of this Article.

3. The exhibition date or dates of any of the photoplays selected by the Exhibitor (if available), or designated as in this Article ninth provided, or otherwise agreed upon between the Distributor and the Exhibitor, shall be for all purposes the exhibition date or dates of such photoplay as though definitely specified in the Schedule.

4. In case this contract embraces a series of feature photoplays, five reels or more in length and featuring a particular star or director, the Exhibitor shall not be required hereunder to exhibit more than one photoplay of any such series every five weeks.

Loss of and Damage to Prints, Records and Discs

Tenth: The exhibitor shall pay to the Distributor a sum equal to the cost of replacement at the Distributor's exchange for each linear foot of any positive print and for all records, discs or other similar devices lost, stolen or destroyed or injured in any way in the interval between the delivery thereof by the Distributor and the return thereof by the Exhibitor in full settlement of all claims for such loss, theft, destruction or injury. Such payment, however, shall not transfer title to or any interest in any such positive print, records, discs or other similar devices to the Exhibitor, or any other party, nor release the Exhibitor from liability arising out of any breach of this contract. The Distributor shall at the option of the Exhibitor repay or credit to the Exhibitor any sums paid by the latter for lost or stolen prints, excepting "news reels," upon their return to the Distributor within sixty (60) days after the date when the same should have been returned hereunder. The Exhibitor shall not be liable for the damage or destruction of any positive prints, records, discs or other similar devices, provided the Exhibitor establishes such damage or destruction occurred while in transit from the Exhibitor. The Exhibitor shall immediately notify the Distributor's exchange by telegraph of the loss, theft or destruction of, or damage or injury to any positive print, records, discs or other similar devices. If any positive print, records, discs, or other similar devices shall be received from the Exhibitor by the Distributor or any subsequent exhibitor in a damaged or partially destroyed condition it shall be deemed to have been so damaged or destroyed by the Exhibitor unless the latter, prior to the second public exhibition thereof shall have telegraphed the Distributor's exchange that such print or records, discs or other similar device were received by the Exhibitor in a damaged or partially destroyed condition, and setting forth fully the nature of such damage and the amount of footage (or number of records or discs) so damaged or destroyed.

Description and Titles of Photoplays

Eleventh: The Exhibitor shall not be required to accept for any photoplay described in the Schedule as the photoplay of a star, or a director, or based upon a specified story, book or play or by an identifying description, any other

photoplay of a different star or different director, or based upon a different story, book or play, or not corresponding to such identifying description, as the case may be. Nothing herein contained shall limit the right of the Distributor to change the title of any such photoplays, or, as respects any photoplay based upon any story, book or play, prevent the making of any alterations, changes in or adaptations thereof.

Assignment Upon Sale of Theatres

Twelfth: This contract shall not be assigned by Exhibitor without the written acceptance of the assignee and the written consent of the Distributor, provided, that if the Exhibitor sells or disposes of his interest in the theatre hereinafter specified, he may assign this contract to the purchaser of such interest without written consent of the Distributor and such assignment shall become effective upon the written acceptance thereof by the assignee; such assignment, however, shall not relieve the Exhibitor of liability hereunder, unless the Distributor consents in writing specifically to release the Exhibitor from such liability.

Exhibition and Advertising

Thirteenth: The Exhibitor agrees to run photoplays (excepting "news reels") as delivered without alterations, excepting with the written or telegraphic approval of the Distributor, subject to requirements of duly authorized public authorities necessitating any change. The Exhibitor also agrees to advertise and announce each photoplay as a Malmar Picture. In all newspaper advertising and publicity issued by the Exhibitor relating to said photoplays the Exhibitor shall adhere to the form of announcement contained in the advertising matter issued by the Distributor.

All advertising accessories used by the Exhibitor in connection with the exhibition and reproduction of said photoplays must be leased from or through the Distributor and must not be sold, leased or given away by the Exhibitor.

Unless this contract expressly provides for the "First Run" in the City or Town wherein the theatre hereinafter specified is located, the Exhibitor agrees not to advertise any of the photoplays herein provided for by means of lithograph, slides, trailers, lobby displays, newspaper an-

nouncements, advertising or otherwise prior to and until after the completion of the exhibition of such photoplay by any other exhibitor having the right of the "first run" thereof in said City or Town.

The Distributor shall not in any wise be liable for any breach of the provisions of the immediately preceding paragraph contained in any other exhibition contract with any other exhibitor.

Taxes

Fourteenth: The exhibitor agrees to pay to the Distributor upon demand any tax, fee or other like charge now and or hereafter imposed or based upon the delivery and or the exhibition and or reproduction of positive prints and or any records, discs or other similar devices of the photoplays and or upon the sums payable under this contract by the Exhibitor to the Distributor. If under any statute or ordinance any such tax, fee or other like charge is or shall be payable or paid by the Distributor and the exact amount payable hereunder by the Exhibitor is not therein definitely fixed or cannot be exactly determined then the Exhibitor agrees to pay such part of any such tax, fee or other like charge, paid or payable by the Distributor as shall be fixed in the manner determined by the then President of the American Arbitration Association.

Minimum Admission Charge

Fifteenth: The Exhibitor warrants and agrees that during the period each of the photoplays herein provided for shall be exhibited in said theatre the Exhibitor will charge for admission to said theatre an actual admission fee which shall not be less than ten cents, unless a greater minimum admission charge is herein elsewhere specified, for each exhibition and that such photoplays shall not be exhibited unless such admission fee is charged.

Adoption Standard License Agreement—Arbitration

Sixteenth: If, prior to the expiration of the term of this agreement, a standard license agreement shall be adopted generally by the Distributors and Exhibitors, then and in that event and on and after the date of the adoption of such standard license agreement, the terms and provisions therein contained relating solely to arbitration shall be

deemed incorporated herein with the same force and effect as if herein fully set forth.

Adoption Zoning Plan

Seventeenth: If, prior to the expiration of the term of this agreement, a zoning or protection plan for the territory in which the Exhibitor's theatre is located shall be generally adopted by Distributors and Exhibitors in said territory, then and in such event and from the date of the adoption of such plan the protection period, if any, therein specified for the Exhibitor's theatre shall be substituted for the protection period, if any, hereinabove granted the Exhibitor with the same effect as if herein fully set forth.

Remedy for Breach

Eighteenth: Anything to the contrary notwithstanding in this or any other agreement between the parties hereto it is agreed that if the Exhibitor fails or refuses to perform fully this contract or any other contract between the parties hereto, the Distributor may at its option, forthwith suspend deliveries of motion pictures provided for in this and any other contract between the parties hereto and or terminate this and any other such contracts, in which event the aggregate of all license fees for all motion pictures specified in this and any other contract whether exhibited and not paid for or not yet exhibited, shall forthwith become due and payable by the Exhibitor. The termination of this agreement by Distributor shall be without prejudice to any other right or remedy which it may have by reason of any breach by the Exhibitor of this or any other existing agreement between the parties.

Delay in or Prevention of Performance.

Nineteenth: In case the Exhibitor shall be delayed in or prevented from the performance of this contract with respect to any of the photoplays herein specified by reason of censor rulings, the elements, accidents, strikes, fire, insurrection; acts of God, the public enemy, public calamity or order of any Court of competent jurisdiction, then such delay or failure of performance with respect to such photoplay shall be excused and all claims or causes of action for damages therefor, or arising therefrom, are hereby ex-

pressly waived by the Distributor. In any such event, the time of the Exhibitor to perform this contract with respect to any such photoplay shall be extended for a period equal to the time of such delay, unless performance thereof because of the happening of any such cause or contingency is rendered impossible, in which case performance by the Exhibitor with respect to any such photoplay shall be waived. The resumption of performance by the Exhibitor shall begin promptly after the removal or abatement of the contingencies or causes of such disability or prevention of performance provided, that if such delays and or prevention of performance, caused as aforesaid, shall continue for a period of three (3) months either party hereto may cancel this contract, but only with respect to any such photoplay the exhibition hereunder of which has been so delayed or prevented, by sending after the expiration of such three (3) months period to the other party notice in writing to such effect.

In case the Distributor shall be delayed in or prevented from the performance of this contract with respect to any of the photoplays herein specified by reason of the elements, accidents, strikes, fire, insurrection, acts of God, the public enemy, public calamity, Court orders, censor rulings, delays of any common carrier, or of the United States Postal authorities, delays in production or failure of the producers of any such photoplays to make or deliver them to the Distributor or of any star or other performer to appear therein in time for delivery as herein provided, then such delay in or prevention of performance shall be excused and all claims or causes of action for damages therefor or arising therefrom are hereby expressly waived by the Exhibitor. In any such event, the time of the Distributor to perform this contract with respect to any such photoplay shall be extended for a period equal to the time of such delay. The resumption of performance by the Distributor shall begin promptly after the removal or abatement of the contingencies or causes of such disability or prevention of performance and the Distributor shall deliver to the Exhibitor any such photoplay at the earliest available date thereafter, and such delivery in any such case shall be with the same force and effect as though delivery took place within the period herein above limited and the Exhibitor agrees, to accept, pay for and exhibit and reproduce in the manner herein provided any such photoplay at such later period pursuant to the terms hereof.

Acceptance of Application

Twentieth: This instrument shall be deemed an application for a license under copyright only and shall not become binding until accepted in writing without alteration or change by an officer of or any person duly authorized by the Distributor and notice of acceptance sent to the Exhibitor as herein provided. The deposit by the Distributor of any check or other consideration given by the Exhibitor at the time of application as payment on account of any sums payable hereunder or the delivery of a print or records, discs or other similar devices of any of the photoplays or the furnishing of any advertising accessories shall not be deemed an acceptance hereof by the Distributor.

Unless notice of acceptance of this application by the Distributor is sent to the Exhibitor by mail or telegraph within the number of days after the date thereof hereinafter specified (immediately following the name of the city wherein is situated the exchange of the Distributor from which the Exhibitor is served, or if such city is not hereinafter named then within the number of days specified immediately following the city hereinafter named nearest thereto) said application shall be deemed withdrawn and the Distributor shall forthwith return any sums paid on account thereof by the Exhibitor. Albany 10; Atlanta 20; Boston 10; Buffalo 10; Charleston 15; Charlotte 15; Chicago 15; Cincinnati 20; Cleveland 15; Dallas 30; Denver 20; Des Moines 15; Detroit 15; Indianapolis 15; Jacksonville 45; Kansas City 15; Los Angeles 25; Little Rock 15; Louisville 15; Memphis 20; Milwaukee 15; Northern New Jersey 7; Minneapolis 20; Butte 30; New Haven 10; New Orleans 15; New York City 7; Oklahoma City 20; Omaha 20; Peoria 15; Philadelphia 10; Pittsburgh 14; Portland, Ore. 30; St. Louis 15; Salt Lake City 30; San Francisco 25; Seattle 30; Washington, D. C. 14.

A copy of this application, signed by the Exhibitor, shall be left with the Exhibitor at the time of signing, and in the event of acceptance thereof as above provided, a duplicate copy, signed by the Distributor, shall be forwarded to the Exhibitor.

Waiver

Twenty-First: The waiver by either party of any breach or default by the other party shall not be construed as a waiver of any other or subsequent breach or default by such other party.

Verbal Promises: Representations

Twenty-Second: This Contract is complete and no promises of representations have been made by either party to the other except as set forth herein.

Counsel Fees

Twenty-Third: In case the Distributor shall institute and prosecute any action against the Exhibitor for any sums becoming due to the Distributor hereunder either by way of rentals, liquidated damages or otherwise, then and in any such case, in addition to the sums sued for and the interest and costs allowable in such action, the Distributor shall be entitled to recover from the Exhibitor its reasonable counsel fees in connection with the institution and prosecution of such action and the collection of any judgment secured therein which amount is hereby fixed at ten percent (10%) of the amount of the recovery had therein.

2988 The following is Film License Agreement between Monogram Pictures Corporation and Jackson Park Theatre dated October 6, 1937, from PLAINTIFF'S EXHIBIT 36:

(Filed October 11, 1944. Roy H. Johnson, Clerk.)

2989 Exhibitor's Application

Monogram Pictures Corporation
Contract for the Playing of
Monogram Pictures

Exchange—Chicago	Contract No. Date 10/6/37	Salesman—Lindau
Theatre Jackson Park	Exhibitor Jackson Park Theatre Corp.	Location of Theatre Chicago, Ill.

Agreement, made in one or more counterparts between Monogram Pictures Corporation, a corporation (hereinafter referred to as the "Distributor"), party of the first part, and the Exhibitor (hereinafter named and referred to as the "Exhibitor", operating the theatre or theatres hereinafter designed), party of the second part.

Witnesseth: The parties hereto agree as follows:

Schedule Incorporated in This Agreement

First: The schedule contained and referred to herein and all part thereof, whether written or printed, are hereby deemed included in and made a part of this agreement.

License

Second: The Distributor hereby grants to the Exhibitor, and the Exhibitor hereby accepts a license under the respective copyrights of the several photoplays designated and described in the Schedule herein subject to the terms, limitations and conditions in this agreement contained to exhibit and reproduce and the Exhibitor agrees to exhibit and reprodnce in synchronism and co-ordiration with the recorded sound thereof (during the period of one year commencing with the date fixed or determined as hereinafter provided for the exhibition in the theatre hereinafter designated of the first photoplay deliverable hereunder, unless otherwise in the Schedule provided) each of such photoplays at the said theatre only for the number of successive days in the said Schedule provided. It being understood that if the Exhibitor does not exhibit all of such

photoplays within the period herein specified, the Exhibitor shall at the end of such period immediately pay to the Distributor the aggregate of rentals specified for all photoplays remaining unplayed. If more than one theatre is hereinafter designated no photoplay is licensed hereunder for exhibition at more than one of such theatres unless otherwise specifically agreed upon in the Schedule.

Recorded Sound: Warranties

Third: (a) "Recorded Sound" as used in this agreement is deemed to mean the spoken words, music or other sounds recorded upon a positive print of a photoplay or upon a record, disc or other similar devices separate and apart from a positive print, for use in synchronism therewith. Distributor does not warrant that such recorded sound will be recorded on the positive print or on records, discs or other similar devices, and reserves the right to use any one or more methods of recording it may from time to time determine.

(b) The Exhibitor warrants and agrees first, that the sound reproducing equipment installed in said theatre will operate reliably and efficiently to reproduce such recorded sound with adequate volume and high quality, whether recorded upon the positive print or upon records, discs or other similar devices; and second, that if copyrighted musical compositions are included in such recorded sound, the Exhibitor shall, at the time of the exhibition of such photoplays and the reproduction of such recorded sound, have an effective license from the American Society of Authors, Composers and Publishers publicly to perform the copyrighted musical compositions in the repertoire of said Society.

(c) The Exhibitor agrees to run all of said photoplays on the same size reels as furnished by Distributor; to return to Distributor's Exchange all damaged or broken parts of all sound records, discs or other similar devices, if any have been delivered to Exhibitor hereunder, immediately following the last exhibition of the photoplay with which such sound records are used; and if such recorded sound is recorded on records, discs or other devices, to replace with black, blank, positive stock all parts removed from the positive print of any photoplay while in the Exhibitor's possession, but Exhibitor shall have no right to remove any part of the positive print except as specifically authorized elsewhere in the license.

Time and Place of Exhibition

Fourth: The Exhibitor agrees to exhibit and reproduce under said license said photoplays, but only at the theatre hereinafter specified, on the exhibition date or dates fixed in the Schedule or determined as hereinafter provided and not to allow any positive print and records, discs, or other similar devices if any thereof to leave the Exhibitor's possession during the period specified for the exhibition thereof by the Exhibitor, nor to exhibit or to permit the exhibition or reproduction of any such positive print and or records, discs or other similar device if any at any other time or place. Such license shall be specifically for such exhibition and reproduction of such photoplays, and for no other purpose. It is agreed that the Exhibitor shall not exhibit the said photoplays on the first exhibition date thereof before six A.M. of that said day.

Payment

Fifth: The Exhibitor agrees to pay for such license as to each of such photoplays the fixed sums herein specified at least seven (7) days in advance of the date of shipment from the Distributor's Exchange or from the last previous exhibitor of the positive print thereof.

Schedule

No.	Pictures (Titles subject to change without notice)	No. Days	Rental Terms	
	Exhibitor guarantee to play a minimum of 12 pictures to be selected out of 30 pictures released by Monogram during the 1937-38 season. Clause: If any picture plays the Balaban & Katz Tower Theatre, the Jackson Park Theatre will receive a 50% reduction in rental.	1/3	$50.00 ea.	Additional Terms: Run: First week of South Side release Protection: Playing Arrangement: No. of pictures offered—46 No. of pictures sold—12

12 Pictures (*a* $50.00 ea.

Reapplication: The Distributor shall have the right to apply the rental terms (including the license fee and other rental terms specified in the Schedule) of any photoplay to any other photoplay listed or embraced in the Schedule, provided that the Distributor shall at no time increase the total number of photoplays to which the same rental terms apply beyond the total of such photoplays specified in the Schedule. In case the Distributor desires to change the rental terms of any photoplay as above provided, the Distributor shall notify the Exhibitor of the photoplay affected and the terms to be applied to such photoplay, in the notice of availability sent to the Exhibitor relating to such photoplay or prior thereto.

End of Schedule

In Witness Whereof, Jackson Park Theatre Corporation, the Exhibitor operating the Jackson Park Theatre, located at 6711 Stoney Island Ave., Chicago, Illinois, has on _____ executed this application, which upon written acceptance by the Distributor when countersigned and approved in the space to the left provided below shall be deemed to be the license to the Exhibitor for the exhibition of the photoplays specified in the Schedule at said theatre in accordance with the terms hereof.

Accepted, Approved and Countersigned at New York, N. Y.

Monogram Pictures Corporation
By. _____
(This signature is for identification only and is not an acceptance)

Exhibitor Jackson Pk Theater
An Individual—A Partnership—
A Corporation
(Strike out two)

By (Illegible)
Partner—General Manager—Officer
(Strike out two)

2990 EXHIBITION CONTRACT

Payment on Account: Deposit

Sixth: The Exhibitor shall pay to Distributor upon the execution of this application the sum of $ receipt whereof is hereby acknowledged, as security for the due and faithful performance by the Exhibitor of all of the terms, provisions and conditions of the license granted hereunder and provided the Exhibitor duly and faithfully performs all of the terms, provisions and conditions of this license, then said sum shall be applied by the Distributor toward the license fees of the last photoplay deliverable hereunder. If the Exhibitor defaults in the due and faithful performance of any of the terms, provisions and conditions of this license the Distributor may apply said sum toward the liquidation of any liability of the Exhibitor under this license or any other agreement which the Distributor has with the Exhibitor, or toward any damage suffered or sustained by the Distributor on account of any breach by the Exhibitor of this license. Anything elsewhere herein contained to the contrary notwithsfanding the Distributor shall be under no obligation to maintain the said sum in any separate fund but shall have the right to co-mingle same with its other funds.

Protection and Run

Seventh: During the life of this contract the Distributor agrees not to exhibit or license the exhibition of any such photoplays in conflict with the "run" or "protection period", if any, in the Schedule specified. Unless otherwise provided herein, such "protection period" shall be computed from the last date of exhibition of each photoplay as fixed herein. If "protection" is granted hereunder against a specified theatre or theatres which "protection" shall indicate that it was the intention of the Distributor to grant such "protection" against all of the theatres in the immediate neighborhood of vicinity of the Exhibitor's theatre, then, unless otherwise provided in the Schedule, such "protection" shall be deemed to apply to and include any theatre that may hereafter be opened in such neighborhood or vicinity.

If the Exhibitor is granted hereunder a second or subsequent "run", the Distributor shall have the right in its sole discretion to grant to the Exhibitor in respect to any of the photoplays herein embraced a "run" prior to such second or subsequent "run" by giving notice in writing to such effect to the Exhibitor and the Exhibitor agrees to exhibit any such photoplay in accordance therewith.

Delivery and Return of Prints, Records, and Discs

Eighth: The Distributor agrees to deliver to the Exhibitor during the period specified in Article Second hereof or otherwise in the Schedule provided for a positive print with recorded sound for exhibition and reproduction of each of such photoplays for exhibition and reproduction at the said theatre on the dates specified or on the dates determined as herein provided. Delivery of such positive prints by the Distributor to the Exhibitor at the Distributor's exchange or to a common carrier or to the United States postal authorities for mailing or to any agent of the Exhibitor shall be deemed delivery by the Distributor to the Exhibitor hereunder.

All deliveries other than at the Distributor's exchange shall be made in time to enable the carrier thereof in accordance with the carrier's time schedule to deliver to the Exhibitor or at the place where the Exhibitor's theatre is located prints at least one hour before the usual time for the opening of the Exhibitor's theatre.

The Exhibitor agrees to return each positive print received by the Exhibitor hereunder, with the reels, containers, records, discs, or other similar devices furnished therewith to the exchange of the Distributor from which the Exhibitor is served or as otherwise directed by the Distributor immediately after the last exhibition of such positive print, in the same conditions as when received by the Exhibitor, reasonable wear and tear due to the proper use thereof excepted. The Exhibitor agrees to pay all cost of transportation of such positive prints, reels, containers, records, discs or other similar devices from the Distributor's exchange or the last previous exhibitor having possession of any of such positive prints (as the case may be) and return to the Distributor's exchange; or if directed by the Distributor, to ship such positive prints, records, discs and or other similar devices elsewhere than to the Dis-

tributor's exchange transportation charges collect. It is agreed that the delivery of a positive print and or any records, discs or other similar devices properly directed and packed in the container furnished by the Distributor therefor, to a carrier designated or used by the Distributor and proper receipt therefor obtained by the Exhibitor, shall constitute the return of such positive and or any records, discs, or other similar devices by the Exhibitor.

If the Exhibitor fails to or delays the return of any positive print and or any records, discs, or other similar devices to the Distributor or fails to forward or delays forwarding (as directed by the Distributor) any such print and or any records, discs, or other similar devices to any other exhibitor, the Exhibitor agrees to pay the Distributor the damage, if any, so caused the Distributor and in addition the damage, if any, so caused such other exhibitor.

Selection or Designation of Play Dates

Ninth: The exhibition date or dates of each photoplay, unless definitely specified or otherwise provided for in the Schedule, or otherwise agreed upon, shall be determined as follows:

1. The Distributor shall mail to the Exhibitor at least fifteen days' notice in writing of the date upon which each photoplay will be available for exhibition by the Exhibitor, consistent with prior runs and or protection heretofore or hereafter granted to other exhibitors (which date is hereinafter referred to as "the available date"). Such notice shall be of no effect unless prints of such photoplay are in the exchange of the Distributor from which the Exhibitor is served.

2. Within fourteen days after the mailing of such notice, the Exhibitor shall select an exhibition date or dates within a thirty day period commencing with such available date, by giving written notice to the Distributor of the date, or dates so selected.

If the exhibition date or dates so selected by the Exhibitor are not open for the Exhibitor, then the exhibition date or dates shall be designated as provided in the following paragraphs "A" and "B":

(A) If other dates within said thirty day period are open the Exhibitor shall immediately select from such other open dates another date or other dates; failing to do so, then the Distributor shall designate the date or dates which

shall be within a period not earlier than two weeks, nor later than six weeks from the date first selected by the Exhibitor, by mailing fourteen days notice to the Exhibitor.

(B) If no other date or dates within said thirty day period are open (after the Exhibitor's written request therefor) then the Exhibitor shall designate the date or dates which shall be within a period not earlier than two, nor later than six weeks from the last date of the said thirty day period, by immediately giving written notice thereof to the Distributor. If the Exhibitor fails to immediately designate such date or dates, as provided in this paragraph "B", the Distributor shall designate the date or dates within the same period by mailing to the Exhibitor fourteen days notice of such date or dates.

If the Exhibitor fails to make any selection within fourteen days after the mailing of the available dates of any photoplay, then the Distributor may at any time designate the exhibition date or dates thereof, which date or dates shall not be prior to the available date, by mailing notice thereof at least fourteen days before such exhibition date or dates; and if any such photoplay shall have been exhibited by any other exhibitor having a "run" prior in point of time and immediately preceding the "run" specified in the Schedule granted to the Exhibitor, then the Distributor shall designate the exhibition date or dates thereof, which shall be within a period of forty-five days commencing with the available date. In case the exhibition date or dates of any of the photoplays shall be designated by the Distributor pursuant to this paragraph, "the period of protection," if any, specified in the schedule, shall begin upon the fifteenth (15th) day of the thirty day period specified in paragraph 2 of this Article.

3. The exhibition date or dates of any of the photoplays selected by the Exhibitor (if available), or designated as in this Article ninth provided, or otherwise agreed upon between the Distributor and the Exhibitor, shall be for all purposes the exhibition date or dates of such photoplay as though definitely specified in the Schedule.

4. In case this contract embraces a series of feature photoplays, five reels or more in length and featuring a particular star or director, the Exhibitor shall not be required, hereunder to exhibit more than one photoplay of any such series every five weeks.

Loss of and Damage to Prints, Records and Discs

Tenth: The exhibitor shall pay to the Distributor a sum equal to the cost of replacement at the Distributor's exchange for each linear foot of any positive print and for all records, discs or other similar devices lost, stolen or destroyed or injured in any way in the interval between the delivery thereof by the Distributor and the return thereof by the Exhibitor in full settlement of all claims for such loss, theft, destruction or injury. Such payment, however, shall not transfer title to or any interest in any such positive print, records, discs or other similar devices to the Exhibitor or any other party, nor release the Exhibitor from liability arising out of any breach of this contract. The Distributor shall at the option of the Exhibitor repay or credit to the Exhibitor any sums paid by the latter for lost or stolen prints, excepting "news reels," upon their return to the Distributor within sixty days (60) days after the date when the same should have been returned hereunder. The Exhibitor shall not be liable for the damage or destruction of any positive prints, records, discs or other similar devices, provided the Exhibitor establishes such damage or destruction occurred while in transit from the Exhibitor. The Exhibitor shall immediately notify the Distributor's exchange by telegraph of the loss, theft or destruction of, or damage or injury to any positive print, records, discs or other similar devices. If any positive print, records, discs, or other similar devices shall be received from the Exhibitor by the Distributor or any subsequent exhibitor in a damaged or partially destroyed condition it shall be deemed to have been so damaged or destroyed by the Exhibitor unless the latter, prior to the second public exhibition thereof shall have telegraphed the Distributor's exchange that such print and or records, discs or other similar device were received by the Exhibitor in a damaged or partially destroyed condition, and setting forth fully the nature of such damage and the amount of footage (or number of records or discs) so damaged or destroyed.

Description and Titles of Photoplays

Eleventh: The Exhibitor shall not be required to accept for any photoplay described in the Schedule as the photoplay of a star, or a director, or based upon a specified story,

book or play or by an identifying description, any other photoplay of a different star or different director, or based upon a different story, book or play, or not corresponding to such identifying description, as the case may be. Nothing herein contained shall limit the right of the Distributor to change the title of any such photoplays, or, as repects any photoplay based upon any story, book or play, prevent the making of any alterations, changes in or adaptations thereof.

Assignment Upon Sale of Theatres

Twelfth: This contract shall not be assigned by Exhibitor without the written acceptance of the assignee and the written consent of the Distributor; provided, that if the Exhibitor sells or disposes of his interest in the theatre hereinafter specified, he may assign this contract to the purchaser of such interest without written consent of the Distributor and such assignment shall become effective upon the written acceptance thereof by the assignee; such assignment, however, shall not relieve the Exhibitor of liability hereunder, unless the Distributor consents in writing specifically to release the Exhibitor from such liability.

Exhibition and Advertising

Thirteenth: The Exhibitor agrees to run photoplays (excepting "news reels") as delivered without alteration, excepting with the written or telegraphic approval of the Distributor, subject to requirements of duly authorized public authorities necessitating any change. The Exhibitor also agrees to advertise and announce each photoplay as a Monograph Picture. In all newspaper advertising and publicity issued by the Exhibitor relating to said photoplays the Exhibitor shall adhere to the form of announcement contained in the advertising matter issued by the Distributor.

All advertising accessories used by the Exhibitor in connection with the exhibition and reproduction of said photoplays must be leased from or through the Distributor and must not be sold, leased or given away by the Exhibitor.

Unless this contract expressly provides for the "First Run" in the City or Town wherein the theatre hereinafter specified is located, the Exhibitor agrees not to advertise any of the photoplays herein provided for by means of lithograph, slides, trailers, lobby displays, newspaper and

nouncements, advertising or otherwise prior to and until after the completion of the exhibition of such photoplay by any other exhibitor having the right of the "first run" thereof in said City or Town.

The Distributor shall not in any wise be liable for any breach of the provisions of the immediately preceding paragraph contained in any other exhibition contract with any other exhibitor.

Taxes

Fourteenth: The exhibitor agrees to pay to the Distributor upon demand any tax, fee or other like charge now and or hereafter imposed or based upon the delivery and/or the exhibition and or reproduction of positive prints and or any records, discs or other similar devices of the photoplays and or upon the sums payable under this contract by the Exhibitor to the Distributor. If under any statute or ordinance any such tax, fee or other like charge is or shall be payable or paid by the Distributor and the exact amount payable hereunder by the Exhibitor is not therein definitely fixed or cannot be exactly determined then the Exhibitor agrees to pay such part of any such tax, fee or other like charge, paid or payable by the Distributor as shall be fixed in the manner determined by the then President of the American Arbitration Association.

Minimum Admission Charge

Fifteenth: The Exhibitor warrants and agrees that during the period each of the photoplays herein provided for shall be exhibited in said theatre the Exhibitor will charge for admission to said theatre an actual admission fee which shall not be less than ten cents, unless a greater minimum admission charge is herein elsewhere specified, for each exhibition and that such photoplays shall not be exhibited unless such admission fee is charged.

Adoption Standard License Agreement—Arbitration

Sixteenth: If, prior to the expiration of the term of this agreement, a standard license agreement shall be adopted generally by the Distributors and Exhibitors, then and in that event and on and after the date of the adoption of such standard license agreement, the terms and provisions therein contained relating solely to arbitration, shall be

deemed incorporated herein with the same force and effect as if herein fully set forth.

Adoption Zoning Plan

Seventeenth: If, prior to the expiration of the term of this agreement, a zoning or protection plan for the territory in which the Exhibitor's theatre is located shall be generally adopted by Distributors and Exhibitors in said territory, then and in such event and from the date of the adoption of such plan the protection period, if any, therein specified for the Exhibitor's theatre shall be substituted for the protection period, if any, hereinabove granted the Exhibitor with the same effect as if herein fully set forth.

Remedy for Breach

Eighteenth: Anything to the contrary notwithstanding in this or any other agreement between the parties hereto it is agreed that if the Exhibitor fails or refuses to perform fully this contract or any other contract between the parties hereto, the Distributor, may at its option, forthwith suspend deliveries of motion pictures provided for in this and any other contract between the parties hereto and or terminate this and any other such contracts, in which event the aggregate of all license fees for all motion pictures specified in this and any other contract whether exhibited and not paid for or not yet exhibited, shall forthwith become due and payable by the Exhibitor. The termination of this agreement by Distributor shall be without prejudice to any other right or remedy which it may have by reason of any breach by the Exhibitor of this or any other existing agreement between the parties.

Delay In or Prevention of Performance

Nineteenth: In case the Exhibitor shall be delayed in or prevented from the performance of this contract with respect to any of the photoplays herein specified by reason of censor rulings, the elements, accidents, strikes, fire, insurrection; acts of God, the public enemy, public calamity or order of any Court of competent jurisdiction, then such delay or failure of performance with respect to such photoplay shall be excused and all claims or causes of action for damages therefor, or arising therefrom, are hereby expressly waived by the Distributor. In any such event, the

time of the Exhibitor to perform this contract with respect to any such photoplay shall be extended for a period equal to the time of such delay, unless performance thereof because of the happening of any such cause or contingency is rendered impossible, in which case performance by the Exhibitor with respect to any such potoplay shall be waived. The resumption of performance by the Exhibitor shall begin promptly after the removal or abatement of the contingencies or causes of such disability or prevention of performance provided, that if such delays and or prevention of performance, caused as aforesaid, shall continue for a period of three (3) months either party hereto may cancel this contract, but only with respect to any such photoplay the exhibition hereunder of which has been so delayed or prevented, by sending after the expiration of such three (3) months period to the other party notice in writing to such effect.

In case the Distributor shall be delayed in or prevented from the performance of this contract with respect to any of the photoplays herein specified by reason of the elements, accidents, strikes, fire, insurrection, acts of God, the public enemy, public calamity, Court orders, censor rulings, delays of any common carrier, or of the United States Postal authorities, delays in production or failure of the producers of any of such photoplays to make or deliver them to the Distributor or of any star or other performer to appear therein in time for delivery as herein provided, then such delay in or prevention of performance shall be excused and all claims or causes of action for damages therefor or arising therefrom are hereby expressly waived by the Exhibitor. In any such event, the time of the Distributor to perform this contract with respect to any such photoplay shall be extended for a period equal to the time of such delay. The resumption of performance by the Distributor shall begin promptly after the removal or abatement of the contingencies or causes of such disability or prevention of performance and the distributor shall deliver to the Exhibitor any such photoplay at the earliest available date thereafter, and such delivery in any such case shall be with the same force and effect as though delivery took place within the period herein above limited and the Exhibitor agrees to accept, pay for and exhibit and reproduce in the manner herein provided any such photoplay at such later period pursuant to the terms hereof.

Acceptance of Application

Twentieth: This instrument shall be deemed an application for a license under copyright only and shall not become binding until accepted in writing without alteration or change by an officer of or any person duly authorized by the Distributor and notice of acceptance sent to the Exhibitor as herein provided. The deposit by the Distributor of any check or other consideration given by the Exhibitor at the time of application as payment on account of any sums payable hereunder or the delivery of a print or records, discs or other similar devices of any of the photoplays or the furnishing of any advertising accessories shall not be deemed an acceptance hereof by the Distributor.

Unless notice of acceptance of this application by the Distributor is sent to the Exhibitor by mail or telegraph within the number of days after the date thereof hereinafter specified (immediately following the name of the city wherein is situated the exchange of the Distributor from which the Exhibitor is served, or if such city is not hereinafter named then within the number of days specified immediately following the city hereinafter named nearest thereto, said application shall be deemed withdrawn and the Distributor shall forthwith return any sums paid on account thereof by the Exhibitor. Albany 10; Atlanta 20; Boston 10; Buffalo 10; Charleston 15; Charlotte 15; Chicago 15; Cincinnati 20; Cleveland 75; Dallas 30; Denver 20; Des Moines 15; Detroit 15; Indianapolis 15; Jacksonville 15; Kansas City 15; Los Angeles 25; Little Rock 15; Louisville 15; Memphis 20; Milwaukee 15; Northern New Jersey 7; Minneapolis 20; Butte 30; New Haven 10; New Orleans 15; New York City 7; Oklahoma City 20; Omaha 20; Peoria 15; Philadelphia 10; Pittsburgh 14; Portland, Ore. 30; St. Louis 15; Salt Lake City 30; San Francisco 25; Seattle 30; Washington, D. C. 14.

A copy of this application, signed by the Exhibitor, shall be left with the Exhibitor at the time of signing, and in the event of acceptance thereof as above provided, a duplicate copy, signed by the Distributor, shall be forwarded to the Exhibitor.

Waiver

Twenty-first: The waiver by either party of any breach or default by the other party shall not be construed as a waiver of any other or subsequent breach or default by such other party.

Verbal Promises: Representations

Twenty-second: This Contract is complete and no promises of representations have been made by either party to the other except as set forth herein.

Counsel Fees

Twenty-third: In case the Distributor shall institute and prosecute any action against the Exhibitor for any sums becoming due to the Distributor hereunder either by way of rentals, liquidated damages or otherwise, then and in any such case, in addition to the sums sued for and the interest and costs allowable in such action, the Distributor shall be entitled to recover from the Exhibitor its reasonable counsel fees in connection with the institution and prosecution of such action and the collection of any judgment secured therein which amount is hereby fixed at ten percent (10%) of the amount of the recovery had therein.

2991 (Filed Oct. 11, 1944. Roy H. Johnson, Clerk.)

The following is Film License Agreement between B. N. Judell, Inc. and Jackson Park Theatre dated August 11, 1938, from Pl. Ex. 36:

2992

B. N. Judell, Inc.
831 S. Wabash Avenue Chicago

Indianapolis	Milwaukee	St. Louis
406 N. Illinois St.	749 N. Seventh St.	3206 Olive St.

Agreement, made in Chicago this 11th day of August, 1938, between B. N. Judall, Inc., (hereinafter called the "Distributor"), party of the first part, and Richard Calkins, an exhibitor operating the Jackson Park theatre, at No. 6711 Stoney Island Avenue, City (Town) of Chicago, State of Illinois (hereinafter called the "Exhibitor"), party of the second part.

Rel. No.	Pictures (Description—Star or Story) (Titles Subject to Change)	Number of Days	License Fee or Minimum Guarantee Rental	Additional Terms:
	Delinquent Parents	2 or 3	$60.00	Run: 1 Week. Protection: on New Woodlawn, Kimbark, Drexel Midway and E.A.R. Playing Arrangement: Play Date Sept. 7-8, 1938.

Number of Pictures Offered 1 Number Licensed 1

End of Schedule

Agreement, made in one or more counterparts between B. N. Judell, Inc., a corporation (hereinafter referred to as the "Distributor"), party of the first part, and the Exhibitor (hereinafter named and referred to as the "Exhibitor," operating the theatre or theatres hereinafter designated), party of the second part.

Witnesseth: The parties hereto agree as folows:

Schedule Incorporated in This Agreement

First: The schedule contained and referred to herein and all parts thereof, whether written or printed, are hereby deemed included in and made a part of this agreement.

License

Second: (a) The Distributor hereby grants to the Exhibitor, and the Exhibitor hereby accepts, a license under the respective copyrights of the several photoplays designated and described in the Schedule herein subject to the terms, limitations and conditions in this agreement contained to exhibit and reproduce and the Exhibitor agrees to exhibit and reproduce in synchronism and co-ordination with the recorded sound thereof (during the period of one year commencing with the date fixed or determined as hereinafter provided for the exhibition in the theatre hereinafter designated of the first photoplay deliverable hereunder, unless otherwise in the Schedule provided) each of such photoplays at the said theatre only for the number of successive days in the said Schedule provided. If more than one theatre is hereinafter designated no photoplay is licensed hereunder for exhibition at more than one of each theatres unless otherwise specifically agreed upon in the Schedule.

(b) If any of such photoplays (except photoplays which shall have been already "generally released" by the Distributor) shall not be "generally released" by the Distributor for distribution in the United States during the period commencing ..... and ending ..... then such photoplays shall be excepted and excluded from this license, and all claims or causes of action in respect thereto are hereby expressly waived by the Exhibitor and the Distributor may exhibit and reproduce such recorded sound thereof or license the exhibition and the reproduction

of such recorded sound thereof of any photoplays, excepted and excluded aforesaid, when and where desired by the Distributor.

Recorded Sound: Warranties

Third: (a) "Recorded sound", as used in this agreement, is deemed to mean the spoken words, music or other sounds recorded upon a positive print of a photoplay or upon a record, disc or other similar devices separate and apart from a positive print, for use in synchronism therewith. Distributor does not warrant that such recorded sound will be recorded on the positive print or on records, discs or other similar devices, and reserves the right to use any one or more methods of recording it may from time to time determine.

(b) The Exhibitor warrants and agrees first, that the sound reproducing equipment installed in said theatre will operate reliably and efficiently to reproduce such recorded sound with adequate volume and high quality, whether recorded upon the positive print or upon records, discs or other similar devices; and second, that if copyrighted musical compositions are included in such recorded sound, the Exhibitor shall, at the time of the exhibition of such photoplays and the reproduction of such recorded sound, have an effective license from the American Society of Authors, Composers and Publishers publicly to perform the copyrighted musical compositions in the repertoire of said Society.

(c) The Exhibitor agrees to run all of said photoplays on the same size reels as furnished by Distributor; to return to Distributor's Exchange all damaged or broken parts of all sound records, discs or other similar devices, if any have been delivered to Exhibitor hereunder, immediately following the last exhibition of the photoplay with which such sound records are used; and if such recorded sound is recorded on records, discs or other devices, to replace with black, blank, positive stock all parts removed from the positive print or any photoplay while in the Exhibitor's possession, but Exhibitor shall have no right to remove any part of the positive print except as specifically authorized elsewhere in this license.

Time and Place of Exhibition

Fourth: The Exhibitor agrees to exhibit and reproduce under said license said photoplays, but only at the theatre hereinafter specified, on the exhibition date or dates fixed in the Schedule or determined as hereinafter provided, and not to allow any positive print and records, discs, or other similar device if any thereof to leave the Exhibitor's possession during the period specified for the exhibition thereof by the Exhibitor, nor to exhibit or to permit the exhibition or reproduction of any such positive print and/or records, discs or other similar device if any at any other time or place. Such license shall be specifically for such exhibitions and reproduction of such photoplays, and for no other purpose.

In Witness Whereof Richard Salkin the Exhibitor, has on (Date) Aug. 11, 1938 executed this application, which upon written acceptance by the Distributor in the space to the left provided below shall be deemed to be the license to the Exhibitor for the exhibition and reproduction of the photoplays specified in the Schedule at said theatre in accordance with the terms hereof.

Jackson Pk. Theatre, L. S.
Exhibitor.
By Richard Salkin,
Partner General Manager Officer
Individual (Strike out three)

B. N. Judell, Inc.,
Harry Charmers,
Salesman.

Manager.

Countersigned
and
Approved
B. N. Judell, Inc.
Date 12/8 1938
By S. Metzger,
Sales Director.

Directions to Salesmen:—While you have every right to trade among prospective customers to obtain the best offer possible for your product, after you have selected a particular Exhibitor whose offer you believe to be the

best obtainable and take a written application from such Exhibitor, you are hereby directed to forward the application to the office of your company and make no further effort to sell the same service to any other Exhibitor directly competing with such Exhibitor until the application so forwarded has been duly rejected, accepted or withdrawn in accordance with its terms. A violation of this direction will subject you to discharge.

2993 Payment.

Fifth: The Exhibitor agrees to pay for such licensg as to each of such photoplays the fixed sums herein specified at least four (4) days in advance of the date of shipment from the Distributor's Exchange or from the last previous exhibitor of the positive print thereof.

Protection and Run.

Sixth: During the life of this contract the Distributor agrees not to exhibit or license the exhibition of any such photoplays in conflict with the "run" or "protection period," if any, in the Schedule specified. Unless otherwise provided herein, such "protection period" shall be computed from the last date of exhibition of each photoplay as fixed herein. If "protection" is granted hereunder against a specified theatre or theatres which "protection" shall indicate that it was the intention of the Distributor to grant such "protection" against all of the theatres in the immediate neighborhood or vicinity of the Exhibitor's theatre, then, unless otherwise provided in the Schedule, such "protection" shall be deemed to apply to and include any theatre that may hereafter be opened in such neighborhood or vicinity.

Delivery and Return of Prints, Records, and Discs.

Seventh: The Distributor agrees to deliver to the Exhibitor during the period specified in Article Second hereof or otherwise in the Schedule provided for a positive print with recorded sound for exhibition and reproduction of each of such photoplays for exhibition and reproduction at the said theatre on the dates specified or on the dates determined as herein provided. Delivery of such positive prints by the Distributor to the Exhibitor at the

Distributor's exchange or to a common carrier or to the United States postal authorities for mailing or to any agent of the Exhibitor shall be deemed delivery by the Distributor to the Exhibitor hereunder.

All deliveries other than at the Distributor's exchange shall be made in time to enable the carrier thereof in accordance with the carrier's schedule to deliver to the Exhibitor or at the place where the Exhibitor's theatre is located prints at least one hour before the usual time for the opening of the Exhibitor's theatre.

The Exhibitor agrees to return each positive print received by the Exhibitor hereunder, with the reels, containers, records, discs, or other similar devices therewith, to the exchange of the Distributor from which the Exhibitor is served or as otherwise directed by the Distributor immediately after the last exhibition of such positive print, in the same condition as when received by the Exhibitor, reasonable wear and tear due to the proper use thereof excepted. The Exhibitor agrees to pay all cost of transportation of such positive prints, reels, containers, records, discs, or other similar devices from the Distributor's exchange or the last previous exhibitor having possession of any such positive prints (as the case may be) and return to the Distributor's exchange; or if directed by the Distributor, to ship such positive prints, records, discs and or other similar devices elsewhere than to the Distributor's exchange transportation charges collect. It is agreed that the delivery of a positive print and or any records, discs or other similar devices properly directed and packed in the container furnished by the Distributor thereof, to a carrier designated or used by the Distributor and proper receipt therefor obtained by the Exhibitor, shall constitute the return of such positive print and or any records, discs, or other similar devices by the Exhibitor.

If the Exhibitor fails to or delays the return of any positive print and or any records, discs, or other similar devices to the Distributor or fails to forward or delays forwarding (as directed by the Distributor) any such print and or any records, discs, or other similar devices to any other exhibitor, the Exhibitor agrees to pay the Distributor the damage, if any, so caused the Distributor and in addition the damage, if any, so caused such other exhibitor.

Selection Or Designation of Play Dates.

Eighth: The exhibition date or dates of each photoplay, unless definitely specified or otherwise provided for in this Schedule, or otherwise agreed upon, shall be determined as follows:

1. The Distributor shall mail to the Exhibitor at least fifteen days' notice in writing of the date upon which each photoplay will be available for exhibition by the Exhibitor, consistent with prior runs and or protection heretofore or hereafter granted to other exhibitors (which date is hereinafter referred to as "the available date"). Such notice shall be of no effect unless prints of such photoplay are in the exchange of the Distributor from which the Exhibitor is served.

2. Within fourteen days after the mailing of such notice, the Exhibitor shall select an exhibition date or dates within a thirty day period commencing with such available date, by giving written notice to the Distributor of the date, or dates, so selected.

If the exhibition date or dates so selected by the Exhibitor are not open for the Exhibitor, then the exhibition date or dates shall be designated as provided in the following paragraphs "A" and "B":

(A) If other dates within said thirty day period are open the Exhibitor shall immediately select from such other open dates another date or other dates; failing to do so, then the Distributor shall designate the date or dates which shall be within a period not earlier than two weeks nor later than six weeks from the date first selected by the Exhibitor, by mailing fourteen days' notice thereof to the Exhibitor.

(B) If no other date or dates within said thirty days period are open (after the Exhibitor's written request therefor) then the Exhibitor shall designate the date or dates which shall be within a period not earlier than two, nor later than six weeks from the last date of the said thirty day period, by immediately giving written notice thereof to the Distributor. If the Exhibitor fails to immediately designate such date or dates, as provided in this paragraph "B," the Distributor shall designate the date or dates within the same period by mailing to the Exhibitor fourteen days' notice of such date or dates.

If the Exhibitor fails to make any selection within fourteen days after the mailing of the available dates of any

photoplay, then the Distributor may at any time designate the exhibition date or dates thereof, which date or dates shall not be prior to the available date, by mailing notice thereof at least fourteen days before such exhibition date or dates; and if any such photoplay shall have been exhibited by any other exhibitor having a "run" prior in point of time and immediately preceding the "run" specified in the Schedule granted to the Exhibitor, then the Distributor shall designate the exhibition date or dates thereof, which shall be within a period of forty-five days commencing with the available date. In case the exhibition date or dates of any of the photoplays shall be designated by the Distributor pursuant to this paragraph, "the period of protection," if any, specified in the schedule, shall begin upon the fifteenth (15th) day of the thirty-day period specified in paragraph 2 of this Article.

3. The exhibition date or dates of any of the photoplays selected by the Exhibitor (if available), or designated as in this Article Eighth provided, or otherwise agreed upon between the Distributor and the Exhibitor, shall be for all purposes the exhibition date or dates of such photoplays as though definitely specified in the Schedule.

4. In case this contract embraces a series of feature photoplays, five reels or more in length and featuring a particular star or director, the exhibitor shall not be required hereunder to exhibit more than one photoplay of any such series every five weeks.

Loss Of and Damage to Prints, Records and Discs.

Ninth: The Exhibitor shall pay to the Distributor a sum equal to the cost of replacement at the Distributor's exchange for each linear foot of any positive print and for all records, discs or other similar devices lost, stolen or destroyed or injured in the interval between the delivery thereof by the Distributor and the return thereof by the Exhibitor in full settlement of all claims for such loss, theft, destruction or injury. Such payment, however, shall not transfer title to or any interest in any such positive print, records, discs or other similar devices to the Exhibitor or any other party, nor release the Exhibitor from liability arising out of any breach of this contract. The Distributor shall at the option of the Exhibitor repay or credit to the Exhibitor any sums paid by the latter

for lost or stolen prints, excepting "news reels," upon their return to the Distributor within sixty (60) days after the date when the same should have been returned hereunder. The Exhibitor shall not be liable for the damage or destruction of any positive print, records, discs or other similar devices, provided the Exhibitor establishes such damage or destruction occurred while in transit from the Exhibitor. The Exhibitor shall immediately notify the Distributor's exchange by telegram of the loss, theft or destruction of or damage or injury to any positive print, records, discs or other similar devices. If any positive print, records, discs, or other similar devices shall be received from the Exhibitor by the Distributor or any subsequent exhibitor in a damaged or partially destroyed condition it shall be deemed to have been damaged or destroyed by the Exhibitor unless the latter, prior to the second public exhibition thereof shall have telegraphed the Distributor's exchange that such print and or records, discs or other similar devices were received by the Exhibitor in a damaged or partially destroyed condition, and setting forth fully the nature of such damage and the amount of footage (or number of records or discs) so damaged or destroyed.

Assignment Upon Sale of Theatres.

Tenth: This contract shall not be assigned by either party without the written acceptance of the assignee and the written consent of the other party; provided, that if the Exhibitor sells or disposes of his interest in the theatre hereinafter specified, he may assign this contract to the purchaser of such interest without written consent of the Distributor and such assignment shall become effective upon the written acceptance thereof by the assignee; such assignment, however, shall not relieve the Exhibitor of liability hereunder, unless the Distributor consents in writing to release the Exhibitor from such liability.

Exhibition and Advertising.

Eleventh: The Exhibitor agrees to run photoplays (excepting "news reels" as delivered without alteration, excepting with the written or telegraphic approval of the Distributor, subject to requirements of duly authorized public authorities necessitating any change. The Exhibi-

tor also agrees to advertise and announce each photoplay as a "B. N. Judell, Inc." In all newspaper advertising and publicity issued by the Exhibitor relating to said photoplays the Exhibitor shall adhere to the form of announcement contained in the advertising matter issued by the Distributor.

All advertising accessories used by the Exhibitor in connection with the exhibition and reproduction of said photoplays must be leased from or through the Distributor and must not be sold, leased or given away by the Exhibitor.

Unless this contract expressly provides for the "First Run" in the City or Town wherein the theatre hereinafter specified is located, the Exhibitor agrees not to advertise any of the photoplays herein provided for by means of lithographs, slides, trailers, lobby displays, newspaper announcements, advertising or otherwise prior to and until after the completion of, the exhibition of such photoplay by any other exhibitor having the right of the "first run" thereof in said City or Town.

The Distributor shall not in any wise be liable for any breach of the provisions of the immediately preceding paragraph contained in any other exhibition contract with any other exhibitor.

Taxes.

Twelfth: The Exhibitor agrees to pay to the Distributor upon demand any tax, fee or other like charges now and or hereafter imposed or based upon the delivery and or the exhibition and or reproduction of positive prints and or any records, discs or other similar devices of the photoplays and or upon the sums payable under this contract by the Exhibitor to the Distributor. If under any statute or ordinance any such tax, fee or other like charge is or shall be payable or paid by the Distributor and the exact amount payable hereunder by the Exhibitor is not therein definitely fixed or cannot be exactly determined then the Exhibitor agrees to pay such part of any such tax, fee or other like charge, paid or payable by the Distributor as shall be fixed in the manner determined by the then President of the American Arbitration Association.

Minimum Admission Charge.

Thirteen: The Exhibitor warrants and agrees that during the period each of the photoplays herein provided for shall be exhibited in said theatre the Exhibitor will charge for admission to said theatre an actual admission fee which shall not be less than ten cents, unless a greater minimum admission charge is herein elsewhere specified, for each exhibition and that such photoplays shall not be exhibited unless such admission fee is charged.

Percentage Bookings.

Fourteenth: If this contract calls for payment or any part thereof computed upon the Exhibitor's gross receipts, such payment or any part thereof shall be made daily, together with a correct itemized statement of the gross receipts of said theatre for admission thereto upon the exhibition date or dates of each photoplay for which payment is so required to be made. Should the Distributor so require, such itemized statement shall be made upon forms furnished by the Distributor. Upon such date or dates an authorized representative of the Distributor is hereby given the right to verify the sale of all tickets of admission to said theatre, and the receipts therefrom; and for such purposes shall have access to the theatre, including the box office, and also the right to examine the Exhibitor's books and records insofar as they relate to such gross receipts. The Distributor, or its authorized representative, shall also have access for a period of sixty (60) days after the receipt by the Distributor of the final box office statement, to all of the Exhibitor's books and records for the purpose of verifying such box office statement. The Distributor agrees that any information obtained by it pursuant to the provisions of this Clause will be treated as confidential, except in any arbitration proceeding or litigation in respect of this contract. The Distributor agrees, unless such representative be a regular employee of the Distributor, not to employ as such representative any person resident of or employed in the place where the Exhibitor's theatre is located, excepting with the consent of the Exhibitor.

Liquidated Damages, Percentage Bookings.

Fifteenth: If the license fee of any photoplay licensed hereunder is to be computed either in whole or in part, upon a percentage of the gross admission receipts of said theatre, and if the Exhibitor fails or refuses to exhibit such photoplay as provided in this contract, the Exhibitor shall pay to the Distributor as liquidated damages for each day that the Exhibitor fails or refuses to exhibit such photoplay (in addition to any fixed sums payable hereunder in respect of such photoplay) a sum equal to such percentage of the average daily gross receipts of such theatre during the period of thirty (30) operating days immediately prior to the date or dates when such photoplay should have been so exhibited, provided, however, that if the Exhibitor shall exhibit such photoplay for less than the full number of days provided for in this contract, such sum equal to such percentage shall be computed, upon a sum equal to seventy five per cent (75%) of the gross receipts of said theatre for the last day of the exhibition thereat of such photoplay.

Sixteenth: If, prior to the expiration of the term of this agreement, a standard license agreement shall be adopted generally by the Distributors and Exhibitors, then and in that event and on and after the date of the adoption of such standard license agreement, the terms and provisions therein contained relating solely to Arbitration shall be deemed incorporated herein with the same force and effect as if herein fully set forth.

Delay In Or Prevention of Performance.

Seventeenth: In case the Exhibitor shall be delayed in or prevented from the performance of this contract with respect to any of the photoplays herein specified by reason of censor rulings, the elements, accidents, strikes, fire, insurrection, acts of God, the public enemy, public calamity or order of any Court of competent jurisdiction, then such delay or failure of performance with respect to such photoplays shall be excused and all claims or causes of action for damages therefor, or arising therefrom, are hereby expressly waived by the Distributor. In any such event, the time of the Exhibitor to perform this contract with respect to any such photoplay shall be extended for a period equal to the time of such delay, unless performance

thereof because of the happening of any such cause or contingency is rendered impossible, in which case performance by the Exhibitor with respect to any such photoplay shall be waived. The resumption of performance by the Exhibitor shall begin promptly after the removal or abatement of the contingencies or causes of such disability or prevention of performance, provided, that if such delay and/or prevention of performance, caused as aforesaid, shall continue for a period of three (3) months either party hereto may cancel this contract, but only with respect to any such photoplay the exhibition hereunder of which has been so delayed or prevented, by sending after the expiration of such three (3) months period to the other party notice in writing to such effect.

In case the Distributor shall be delayed in or prevented from the performance of this contract with respect to any of the photoplays herein specified by reason of the elements, accidents, strikes, fire, insurrection, acts of God, the public enemy, public calamity, Court orders, censor rulings, delays of any common carrier, or of the United States Postal authorities, delays in production or failure of the producers of any such photoplays to make or deliver them to the Distributor or of any star or other performer to appear therein in time for delivery as herein provided, then such delay in or prevention of performance shall be excused and all claims or causes of action for damages therefor or arising therefrom are hereby expressly waived by the Exhibitor. In any such event, the time of the Distributor to perform this contract with respect to any such photoplay shall be extended for a period equal to the time of such delay, provided, however, that in case any such delay or prevention shall prevent the Distributor from "generally releasing" any such photoplay during the period specified in paragraph (b) of Article Second, the provisions of such paragraph shall govern, unless performance because of the happening of any such cause of contingency is rendered impossible, in which case performance by the Distributor with respect to any such photoplay shall be waived. The resumption of performance by the Distributor shall begin promptly after the removal or abatement of the contingencies or causes of such disability or prevention of performance and the Distributor shall deliver to the Exhibitor any such photoplay at the earliest available date thereafter, and such de-

livery in any such case shall be with the same force and effect as though delivery took place within the period herein above limited and the Exhibitor agrees to accept, pay for and exhibit and reproduce in the manner herein provided any such photoplay at such later period pursuant to the terms hereof.

Road Shows.

Eighteenth: The Distributor shall have the right to exhibit and or cause to be exhibited as a "roadshow," at any time prior to the exhibition thereof hereunder, such of the photoplays licensed hereunder as the Distributor may from time to time select and determine, provided, however, that such roadshow exhibition shall be at theatres at which admission prices for evening performances, during such exhibition thereof, of not less than one dollar shall be charged for the majority of the orchestra seats, and further provided that, except in the cities of New York and Los Angeles, not more than two of such photoplays shall be so roadshown.

If any such roadshow exhibition shall be in the city of New York, N. Y., and if the Exhibitor's theatre be situated in a territory then served by the Distributor's exchange or exchanges located in said City, the Distributor shall have the right to except and exclude from this license any such photoplay (not exceeding in the aggregate two of such photoplays) so roadshown in said City upon sending written notice to that effect to the Exhibitor not later than eight weeks after the commencement of such roadshow exhibition in such City, provided the Distributor shall by like notice except and exclude such photoplay from all other contracts containing this clause and licensing the exhibition of such photoplay in such territory. Such exception and exclusion shall not be affected in case the Distributor shall inadvertently omit to send such notice to any of such other exhibitors.

If any such roadshow exhibition shall be in the city of Los Angeles, Cal., and if the Exhibitor's theatre be situated in the territory then served by the Distributor's exchanges located in said City, the Distributor shall have the right to except and exclude from his license any such photoplay (not exceeding in the aggregate two of such photoplays) so roadshown in said City, upon the same terms and conditions above provided for the exception and

exclusion of photoplays roadshown in the city of New York.

If and when any such roadshow exhibition (except any roadshow exhibition in New York and or Los Angeles) shall be in the territory served by the Distributor's exchange or exchanges serving the Exhibitor's theatre, such photoplay so roadshown in such territory shall forthwith be excepted and excluded from this license. The Distributor shall send written notice to that effect, to the Exhibitor within fourteen (14) days after such roadshow exhibition commences.

The Distributor may so exercise such right to except and exclude any such photoplay from time to time, in the respective territories, as above defined, in the United States. Any photoplay so roadshown in any place in the United States, and not excepted and excluded from this license as aforesaid, shall not be deemed available for exhibition hereunder until after the completion of such roadshowing of such photoplay in the United States, and such photoplay shall be exhibited hereunder as and when available.

The Distributor may exhibit and or license the exhibition of any and all photoplays excepted and excluded from this license by the Distributor as aforesaid, when and where desired by it, free from all claims of the Exhibitor in respect thereof.

Acceptance of Application.

Nineteenth: This instrument shall be deemed an application for a license under copyright only and shall not become binding until accepted in writing without alteration or change by an officer or by any person duly authorized by the Distributor and notice of acceptance sent to the Exhibitor as herein provided. The deposit by the Distributor of any check or other consideration given by the Exhibitor at the time of application as payment on account of any sums payable hereunder or the delivery of a print or records, discs or other similar devices of any of the photoplays or the furnishing of any advertising accessories shall not be deemed an acceptance hereof by the Distributor.

Unless notice of acceptance of this application by the Distributor is sent to the Exhibitor by mail or telegraph within the number of days after the date thereof hereinafter specified (immediately following the name of the

city wherein is situated the exchange of the Distributor from which the Exhibitor is served, or if such city is not hereinafter named then within the number of days specified immediately following the city hereinafter named nearest thereto) said application shall be deemed withdrawn and the Distributor shall forthwith return any sums paid on account thereof by the Exhibitor. Albany 10; Atlanta 20; Boston 10; Buffalo 10; Charleston 15; Charlotte 15; Chicago 15; Cincinnati 20; Cleveland 15; Dallas 30; Denver 20; Des Moines 15; Detroit 15; Indianapolis 15; Jacksonville 15; Kansas City 15; Los Angeles 25; Little Rock 15; Louisville 15; Memphis 20; Milwaukee 15; Northern New Jersey 7; Minneapolis 20; Butte 30; New Haven 10; New Orleans 15; New York City 7; Oklahoma City 20; Omaha 20; Peoria 15; Philadelphia 10; Pittsburgh 14; Portland, Ore., 30; St. Louis 15; Salt Lake City 30; San Francisco 25; Seattle 30; Washington, D. C., 14.

This application and any application for other photoplays of the Distributor executed by the Exhibitor at the same time shall, for the purpose of this Article only, be deemed one application unless an agreement to the contrary contained in the Schedule is specifically signed by the Exhibitor.

A copy of this application, signed by the Exhibitor, shall be left with the Exhibitor at the time of signing, and in the event of acceptance thereof as above provided, a duplicate copy, signed by the Distributor, shall be forwarded to the Exhibitor.

Waiver.

Twentieth: The waiver by either party of any breach or default by the other party shall not be construed as a waiver of any other or subsequent breach or default by such other party.

Verbal Promises, Representations.

Twenty-first: This Contract is complete and no promises or representations have been made by either party to the other except as set forth herein.

2994 The following is Film License Agreement between Albert Dezel and Jackson Park Theatre dated February 17, 1938, from Pl. Ex. 36:

CONTRACT AND LICENSE

Make total four copies—original and next two copies to Distributor, last copy to the Exhibitor. Exhibitor's approved copy will be forwarded when and if approved. Salesmen to fill in all information requested and mail with advertising order to Distributor at once.

Agreement, made in quadruplicate, this 17th day of February, 1938, between Distributor, Albert Dezel (hereinafter called the "Distributor") and Exhibitor, Jackson Park Theatre, an Exhibitor operating the Jackson Park Theatre at 6711 Stony Island, in the City of Chicago, State of Illinois (hereinafter called the "Exhibitor").

Witnesseth: The parties hereto agree as follows:

The Distributor hereby grants to the Exhibitor, and the latter accepts, a license under the respective copyrights of the several photoplays designated and described in the Schedule herein, subject to the terms and conditions hereinafter stated to exhibit (during the year commencing with the date fixed or determined as hereinafter provided for the exhibition in the above named theatre of the photoplay slides, etc., deliverable hereunder) each of such photoplays, slides, etc., at the said theatre only, for the number of successive days in the said schedule specified.

Such license shall be specifically for the exhibition of such photoplays, slides, etc., at said theatre on the exhibition date or dates specified in said Schedule or determined as hereinafter provided and for no other purpose.

The Exhibitor agrees to exhibit said photoplays and only at the theatre above specified on the said date or dates and will not allow any positive print thereof to leave the Exhibitor's possession during the period specified for the exhibition thereof by the Exhibitor, nor exhibit or permit the exhibition of any such positive print, slides, etc., at any other time or place than those herein specified or determined as herein provided.

Schedule Agreed Upon.

Attraction consisting of photoplay, etc., known as "Assassin of Youth." Play dates from Wednesday, March 2, to Thursday, March 3, 1938, inclusive. Number of performances: Prices, Matinees, 20 cents. Prices, Nights, 30 cents. 1st, 2nd, 3rd, or subsequent run in city. Continuous— Make Equipment — S. F. or Disc— ? Profection on E. A. R., Drexel, Woodlawn, Kimbark, Midway and Ray. Cost of second feature to be deducted from your receipts. Distributor to furnish feature material for lobby.

The Exhibitor agrees to spend in newspaper advertising the sum to be agreed and to purchase advertising accessories from Distributor in the sum of $ .....

The Exhibitor agrees to pay the Distributor or authorized agent as the license fee for the licence granted hereunder a sum equal to 25 percent of the Exhibitor's gross receipts. Settlements to be made nightly; each party is to receive the same proportioned share of all monies received from the sale of tickets from any source whatsoever.

In addition to all of the rights hereof, the Exhibitor hereby authorizes the Distributor to have a representative, or representatives stationed at said theatre during the entire period provided for the exhibition of said photoplay at said theatre, or during any part of said period. Said representative to verify receipts and admission prices charged, and to take admission tickets at the entrances to said theatre.

Any free list of the theatre shall be suspended during the exhibition of the said photoplay hereunder, and no reduced or gratuitous admissions shall be allowed unless expressly and specifically provided for in writing.

If the Exhibitor charges less than the admission prices herein stipulated, the Exhibitor shall account for and be liable for all admissions to the said theatre during the exhibition of such photoplay on the basis of the prices hereinabove stipulated.

The Exhibitor agrees to run photoplays as delivered without alteration, excepting with the written or telegraphic approval of the Distributor.

The Exhibitor agrees to furnish on the above dates and for the above attraction, the above theatre properly lighted, heated, cleansed and licensed; attaches to work front of theatre, orchestra or organ and advertising in the daily papers seven days in advance of the opening date of attraction, house programmes, tickets, ticket sellers, bill post-

ing and distributors. To furnish the resources of the theatre in properties and scenery and all necessary stage employees and motion picture operators.

The Exhibitor shall furnish to the Distributor daily a correct itemized statement, signed by Cashier and House Manager, of the gross receipts of said theatre for admission thereto the exhibition date or dates for which payment is required to be made. Should the Distributor so require, such itemized statement shall be made upon forms furnished by the Distributor.

The Distributor shall have access during the period of exhibition of each such photoplay and for a period of sixty (60) days after the receipt by the Distributor of the final box office statement, for the purpose of inspection, to the box office and to all books and records relating to the Exhibitor's box office receipts during the period of exhibition of each photoplay.

Payment or any part thereof computed upon the Exhibitor's box office receipts shall be made daily during the exhibition of said photoplay, slides, etc.

It is expressly understood and agreed that any and all sums due and payable to the Distributor out of the Exhibitor's gross receipts shall be considered by any and all persons whomsoever as being a first lien and attachment on and to the Exhibitor's entire gross receipts as accumulated and delivered during the above play dates, and from the date of the first play date, until such time as any and all sums due and payable to the Distributor are received by said Distributor in cash.

This contract shall not be assigned without written consent of the Distributor. The Distributor shall have the exclusive right to sell during this engagement within said theatre booklets dealing with the subject matter as contained in said photoplays, slides, etc.

The Exhibitor expressly agrees to post and distribute sufficiently in advance, all advertising matter furnished by Distributor and agrees to run advance trailer and slide on screen of said theatre at least 7 days in advance of play dates.

This contract shall not be subject to cancellation by either party. The Exhibitor agrees not to present any other similar attraction between date of this contract and the play dates hereon.

It is agreed that should all or any part of said film be destroyed or damaged in any way while in the possession of the Exhibitor, or until it is returned to the actual

possession of Distributor, the Exhibitor agrees to pay the cost in full for such damage or loss at the rate of 10c per foot for all damaged film.

No deductions shall be made by Exhibitor from gross receipts or against Distributor for any imprinting, dating, signs or display work, nor for transportation of any films or accessories, such transportation charges to be paid both ways by Exhibitor.

In the event of national or local calamity, censorship, express delay, or any other unforeseen accident or condition arising which shall render the fulfillment of this contract by party of the first part impossible, party of the first part shall not be held legally responsible for any damages caused thereby.

This contract is subject to the approval of the Producers of the above attractions. Such approval in writing, by wire or ordinary mail to be sufficient in lieu of actual approval hereon.

The waiver by either party of any branch or default by the other party shall not be construed as a waiver of any other or subsequent breach or default by such other party.

It is especially understood and agreed that no promises or representations verbal or otherwise except as contained in this agreement have been made by the Distributor or its salesman or representative to the Exhibitor. The Distributor to have option of furnishing tickets to be sold during this engagement. Should the Exhibitor refuse to abide by the terms of this contract, the Distributor shall have the right to revoke the license herein granted and remove and take immediate possession of the films and other properties belonging to said Distributor without legal process or notice and the Distributor shall not be liable for any damages caused thereby.

In witness whereof, the parties hereto have duly executed these presents the day and the year first above written.

Distributor: Albert Dezel.
Exhibitor: P. B. Salkin.
As the duly authorized agent for theatre or individual or corporation controlling above theatre.

It is understood and agreed that the Exhibitor pays all express charges.

Exhibitor agrees to pay for hauling lobby display to and from theatre.

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages contain a true copy of Volume II of the printed record, filed in this Court on the fourteenth day of February, 1945, in:

Cause No. 8716.

Florence Bigelow, *et al.*,
Plaintiffs-Appellees,

vs.

RKO Radio Pictures, Inc., a Corporation, *et al.*,
Defendants-Appellants,

as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 6th day of September, A. D. 1945.

(signed) Kenneth J. Carrick
(seal) *Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.*